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90 U.S. 148
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## SUPREME COURT OF THE UNITED STATES.

No. 134.

SOLOMON L. HOGE, COMPTROLLER-GENERAL OF THE STATE OF SOUTH CAROLINA, APPELLANT,

vs.

THE RICHMOND AND DANVILLE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED AUGUST 12, 1876.



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1 In circuit court, fourth circuit.

THE UNITED STATES OF AMERICA,
*District of South Carolina, to wit:*

At a circuit court of the United States for the fourth circuit, in and for the district aforesaid, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, A. D. 1874, before the honorable Hugh L. Bond and the honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THE RICHMOND AND DANVILLE RAILROAD Company, complainant,
*vs.*
ATLANTA AND RICHMOND AIR LINE RAILway Company, Solomon L. Hoge, et al., defendants.

Be it remembered that, heretofore, to wit, on the 23rd day of May, A. D. 1874, the said The Richmond and Danville Railroad Company impleaded the said Atlanta and Richmond Air Line Railway Com-
2 pany, Solomon L. Hoge, et al., in a bill for relief, &c., as follows:

*Bill.*

Circuit court, fourth circuit.

UNITED STATES OF AMERICA,
*District of South Carolina:*

THE RICHMOND AND DANVILLE RAILROAD Company, complainant,
*vs.*
ATLANTA AND RICHMOND AIR LINE RAILway Company, Solomon L. Hoge, et al.
In equity.

To their honors the circuit judges:

The bill of complainant of the Richmond and Danville Railroad Company, a body corporate by and under the laws of the State of Virginia, against the Atlanta and Richmond Air Line Railway Company; the city of Greenville, a municipal corporation by and under the laws of the State of South Carolina; Solomon L. Hoge, a citizen of the State of South Carolina; Joseph P. Latimer, a citizen of the State of South Carolina; J. P. F. Camp, a citizen of the State of South Carolina; John L. Watson, a citizen of the State of South Carolina, respectfully
3 sheweth unto your honors as follows, to wit:

I. Your orators are the bona fide owners of twenty-two thousand shares of the capital stock of the Atlanta and Richmond Air Line Railway Company; that the said Atlanta and Richmond Air Line Railway is a corporation chartered by and under the laws of the States of North Carolina, South Carolina, and Georgia, and has been and is doing business under its charter in the State of South Carolina; that the city of Greenville is a stockholder in the said Atlanta & Richmond Air Line Railway Company, and owns five thousand shares of its stock; that S. L. Hoge is comptroller-general of the State of South Carolina, and,

with Sam'l W. Melton, who is attorney-general, F. L. Cardoza, who is State treasurer, and Henry E. Hayne, who is secretary of state, constitute a State board of equalization; that Joseph P. Latimer is the county treasurer of Greenville County, J. P. F. Camp is county treasurer of Spartanburg County, and John L. Watson is county treasurer of York County.

II. That the said company was duly incorporated in the State of
4 South Carolina by an act of the general assembly, passed on the 20th day of December, A. D. 1856, by the name of the "Air Line Railroad Company in South Carolina;" that by an amendment to said charter, passed on the 18th day of September, 1868, it was provided that "if said company shall (as authorized by its charter) consolidate or unite with any other company or companies, it may adopt such other or modified corporate name and increase or diminish the number of directors now provided for as shall be deemed best and agreed upon by such companies; that on the 29th day of June, A. D. 1870, the said company did consolidate and unite with the Georgia Air Line Railroad Company, and the name was changed to the Atlanta and Richmond Air Line Railway Company.

III. That by the 4th section of the said act of incorporation of the State of South Carolina, ratified on the 20th day of December, A. D. 1856, it is provided as follows: "That said company shall have full power and authority to survey, lay out and construct a railroad from the line of the State of Georgia, in the directi on of the city of Atlanta, to
Anderson Court House, and thence to some point of connection
5 with the Charlotte and South Carolina Railroad, in the direction of Charlotte, North Carolina, or, in their discretion, from the Greenville and Columbia Railroad, at or near the town of Newberry, to some point of connection with the said Charlotte and South Carolina Railroad, at or near the town of Chesterville, and the same to equip, use and enjoy, with all the rights, privileges and immunities granted to the Greenville and Columbia Railroad Company, and under the act incorporating the same, and the several acts amendatory thereof, as far as they may be applicable to the purposes of the charter hereby granted."

IV. That sec. 16 of an act of the general assembly of South Carolina, entitled "An act to authorize the formation of the Greenville and Columbia Railroad Company," ratified on the 15th day of December, A. D. 1845, is as follows: "That the exclusive right to make, keep up, and use the said railroad and the conveyances and transportation thereupon shall rest and continue in the said company for and during the term of thirty-six years, to be computed from the time of the corporate existence of the company; and that during the said term of thirty-six years the
stock of the said company and the real estate that may be pur-
6 chased by them, and be connected with or subservient to their works, hereby authorized, shall be exempted from taxation; and after the lapse of the said term of thirty-six years, the said Greenville & Columbia Railroad Company shall be and remain incorporate, and be vested with all the estate, powers and privileges, as to their own works herein granted and secured, except that the legislature may authorize the formation of other companies, and the construction of other railroads, for the trade or intercourse contemplated therein; but the legislature may renew and extend the exclusive right of said Greenville and Columbia Railroad upon such terms as may be prescribed by law and accepted by said company: Provided, That the subscription of stock in the said company be filled up to the amount of three thousand shares,

within thirteen months from the passing of this act, and the railroad be commenced within two years, and be completed within ten years, after the shares shall be subscribed."

V. That the said Atlanta and Richmond Air Line Railway Company has well and justly exercised the power conferred by its charter,
7 and is well entitled to protection in all the rights which belong to it under that contract.

VI. That the constitution of the State of South Carolina subsequently was changed and by that constitution as the same adopted April 16th, A. D. 1868, in art. II, sec. 2, title corporations, it was declared that "the property of corporations now existing or hereafter created shall be subject to taxation, except in cases otherwise provided for in this constitution;" and in art. IX, sec. 1, title finance and taxation, it was declared that "the general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mining and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, or charitable purposes." And saving and excepting these, no other exemptions are provided for in the said constitution.

VII. That subsequently to the adoption of the said constitution, the general assembly of South Carolina passed a number of acts for
8 the purpose of carrying out the provisions and exercising the power of the said constitution; and in the general statutes, under title III, and chapter 12, it is declared among other things as follows:

"SEC. 14. The president and secretary of every railroad company whose track or road-bed, or any part thereof, is in this State, shall, annually, between the first of July and twentieth of August, return to the auditor of state, under their oaths, the total length thereof in each county, town, city, and incorporated village in this State, the tota length of their double track in this State, and the length thereof in each county, town, city, and incorporated village of this State, the total length of all their side-tracks, and the length thereof in each city, county, town, and incorporated village in this State; the location and value of all their shops, depots, grounds, station-houses, wood and water stations, buildings, stationary engines, tools, implements and fixtures in South Carolina, and all other real estate necessary to the daily running operations of the road; the number and value, each, of all their locomotive engines, passenger, freight, platform, gravel, construction, hand and other cars; the value of their moneys
9 and credits; the total value of the entire road appurtenances and equipments, and the total value of said road in South Carolina, with its appurtenances and equipments.

"SEC. 15. The president and secretary of every railroad company mentioned in the preceding section shall also, annually, between the first of July and the twentieth of August, return to the county auditor of each county in South Carolina, through or into which such road or any part thereof may be located, a statement of the value of said road and the property of the company in said county, and in each of the towns, cities, and villages of said county, through or into which said road or part thereof is located, in the manner and form required by this chapter in the return to the auditor of state.

"SEC. 16. In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed, and track of the whole road shall be fixed, and such value apportioned pro rata to each

mile of the main track; and to the value of the number of miles of main track in each town, city, and incorporated village of each county in this State, through and into which said road is located, shall be added the value of the real estate, fixtures, stationary engines, tools, implements, machinery, and other stationary property provided for use in the daily operations of the road situate in said town, city, or village; and the total value of the rolling-stock, moneys, and credits shall be apportioned pro rata to each mile of the main track of said road, and the amount thereof, according to the number of miles of main track in each town, city, and village in this State added to the value of the main track in such town, city, and village respectively; and the aggregate value of said road and property in this State, and in each county, city, town, and incorporated village of this State, through or into which said road is located, shall be stated in said return.

"SEC. 17. The return and oath, required by this chapter, of officers of railroad companies, shall be made in such form as shall be prescribed by the auditor of state.

"SEC. 18. If any railroad, its appurtenances, equipments, &c., shall be in the hands of a receiver or other officer, such receiver or other officer shall make the returns required by this chapter.

"SEC. 19. The auditor of state, or any person appointed by him for that purpose, may put any question in writing he may deem proper, to any officer, agent or receiver of any railroad company having any portion of its track in this State; and he may summon any officer, receiver or agent of such company to appear before him and testify, under oath (which oath said auditor is authorized to administer), touching such railroad company's property, and the management and disposition thereof; and he may, by himself, or some person appointed by him, examine the books and papers of such company, in the hands of the company or any of its officers, agents or receivers; and all such officers, agents and receivers shall answer, under oath, all such questions as shall be put to them, or either of them, by said auditor, or any person appointed by him for that purpose, relative to the condition, amount, and value of said company's property, and the management or disposition thereof; and if any such officer, receiver or agent shall refuse or neglect to appear before said auditor, or the person appointed by him, or to answer any question put to him or them as aforesaid, or submit the books and papers aforesaid for examination, in manner aforesaid, he shall be deemed guilty of a misdemeanor, and, upon indictment and conviction therefor, in the court of general sessions for any county (which court shall have complete and full jurisdiction in all such cases), shall be fined in any sum not exceeding five hundred dollars, and costs of prosecution, and confined in the jail of said county until he answers all questions which may be put to him by the auditor of state, and until said fine and costs be paid.

"SEC. 20. The auditor of state, treasurer of state, secretary of state, comptroller-general, and attorney-general of the State shall constitute a State board of equalization (a majority of whom shall constitute a quorum for the transaction of business), who shall meet at the office of the auditor of state, at the capital, on the second Wednesday of September, annually, and equalize the value of the property of railroad companies whose roads are wholly or partially in this State, as returned to the auditor of state, under the provisions of this chapter, by increasing the value of the roads and property of such companies as shall have been, in their judgment, returned at too low a valuation, and diminish-

ing the values of such as may have been returned at too high a valuation. They shall keep a record of their proceedings, which shall
13 be signed by all the members present, and deposited with, and kept by, the auditor of state; and a majority of the members present shall be competent to decide all questions which may come before said board.

"SEC. 21. The auditor of state shall certify to the county auditor of each county in which any railroad or part thereof may be located the valuation of railroad property in said county, as returned to him, with all additions made to, or deductions from, the valuation of the property of any railroad company in said county by the State board of equalization; and the county auditor shall charge the railroad company in the several towns, cities and incorporated villages of their county for taxation, with the valuations returned by such company or companies, after adding thereto, or deducting therefrom, the amounts directed by the auditor of state."

VIII. That subsequently, by an act approved the 28th of February, A. D. 1870, general statutes, title 3, chapter XIII, sec. 62 (on page 96), it is enacted that "the collection of taxes shall not be stayed or prevented by any injunction, writ or order issued by any court or judge thereof." And in the same act it is provided, in section 8 of the same title and chapter of the general statutes, at page 82, that "when-
14 ever any person or persons charged with taxes upon the books of any county treasurer in this State shall state, in writing, to said treasurer that he or they have been erroneously or illegally charged with the same, the said county treasurer shall submit to the county auditor a full statement of the facts in the case, which statement shall be forwarded to the State auditor, with such additional information, relating thereto, as the said county auditor may be able to give; and said county treasurer shall not be required to proceed against the party or parties so claiming to have been erroneously or illegally charged with taxes, by distress or otherwise, until the State auditor shall, in writing, direct him so to do." And by sec. 63, on page 96: "In any action or proceeding against any county treasurer in this State, for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected as taxes, assessments or penalties, unless the party bring such action or proceeding shall make it appear that a notice in writing of the claim on which such suit may be brought was given to said treasurer in pursuance of the 8th sec. of this chapter, and unless it shall be made to appear that said treasurer has proceeded contrary to the provisions of this chapter, the
15 amount recovered in such suit shall not exceed the value of the property or money aforesaid."

IX. That, by the 7th sec. (on page 82), it was also provided that "if any taxes charged on real estate be regularly paid, and such real estate be erroneously returned delinquent and sold for such taxes, the sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the county auditor, he shall, on demand of the party interested, submit the matter to the auditor of state; and if the auditor of state approve thereof in writing, the amount paid by the purchaser at such void sale, or the amount so illegally collected, shall be repaid to the party paying the same, out of the county treasurer on the order of the county auditor; and so much of said taxes as shall have been paid into the State treasurer shall be refunded to the county treasurer, and the county auditor shall retain the same in his next annual settlement, and charge the State therewith."

X. That the Atlanta and Richmond Air-Line Railway Company, supposing that it was liable for taxes, and that, whether liable or not, under sec. 14 and 15 of title 3, chapter XIII, it was supposed to be
16 obligatory on the said company to make the returns as therein prescribed, and they were accordingly made. That since then the company has been advised that, under the charter hereinbefore quoted as granted by the general assembly of the said State of South Carolina, the said Atlanta and Richmond Air-Line Railway Company is exempt from taxation for the term of thirty-six years from the date of the completion of its said railroad, which was on the 4th day of September, A. D. 1873; and the said Atlanta and Richmond Air-Line Railway Company has notified the defendants, John L. Watson, J. P. F. Camp, and Joseph P. Latimer, in accordance with the requirements of sec. 8 of chapter XIII, of title 3 (page 52), hereinbefore quoted, that said tax was erroneously and illegally assessed.

XI. That sec. 36 of the declaration of rights provides, inter alia, that "all property subject to taxation shall be taxed in proportion to its value"; and sec. 1, of article IX, provides that "the general assembly shall provide by law for a uniform and equal rate of assessment and taxation"; but notwithstanding this, as your orators are informed and believe, the State board of equalization has, in the discharge of its
17 duty under sec. 20 of chapter XII, title 3, fixed the same valuation on all of the railroads, though the Atlanta and Richmond Air-Line Railway, being a new line, has not done, and for years may not do, more than a comparatively small business, and its value is therefore proportionately diminished. That not only is this true, but that the rate per cent. of taxes in different counties in the State of South Carolina materially differs. And sec. 16 of the statute, as hereinbefore quoted, provides for the total value of the road being prorated in proportion to the number of miles in each county.

XII. That by sec. 3 of chapter XIII, of title 3 (page 80), it is provided that "when the taxes and assessments charged against any party or property on the duplicate shall not be paid on or before the 15th of January after the assessment thereof, or when the remainder of such taxes and assessments shall not be paid on or before the 15th of February next, thereafter, together with twenty per cent. penalty on such remaining unpaid, the county treasurer shall proceed to collect the same by distress or otherwise, as may at the time be prescribed by law, together with a penalty of five per cent. on the amount so delinquent, which penalty shall be for the use of the treasurer as a compensation for making such collection.

18 XIII. And that the said John L. Watson, county treasurer of York County, J. P. F. Camp, county treasurer of Spartanburg County, and Joseph P. Latimer, county treasurer of Greenville County, have notified the said Atlanta and Richmond Air-Line Railway Company that executions have been issued in these several counties for the amount of said taxes and penalties thereon, and that unless the same be at once paid, they will proceed to enforce payment thereof in the manner provided by law.

XIV. That the said Atlanta and Richmond Air Line Railway Company, as your orators are informed, is unable by any proceedings permitted to be issued out of the courts of the State of South Carolina, to protect the property of the corporation, which is the property of your orators and of the other stockholders thereof, from the great wrong and injury with which it has been threatened, and which is now about to be enforced; that by the 62d sec. of chapter XIII, of title 3 (page 96), it is

positively declared that "the collection of taxes shall not be stayed or prevented by any injunction writ, or order issued by any court or judge thereof."

XV. That by sec. 8 of chapter XIII, of title 3, page 82, the power is reserved to the State auditor to decide whether the tax complained of as erroneous or illegally charged shall be collected; that if the State auditor shall decide that such taxes have not been erroneously or illegally charged, no injunction, writ, or order of any court shall stay the collection of said tax; that in sec. 63 of chapter XIII of title 3, page 96, a remedy is given by implication, by an action against the county treasurer, but it is wholly uncertain and inadequate. In the next section (64) it is provided that the judgment, if recovered in any suit, shall be paid in the manner provided in the said 63d section, and the 63d section makes no provision whatever for the payment of any judgment; that thus judicial power is taken from those to whom, under the constitution of the State, it is committed, the exercise of it by them in certain cases prohibited, and that power and the exercise of it is transferred to comptroller-general, upon whom the duties of the State auditor have been devolved by the statute abolishing the last named office.

XVI. That thus, while all protection is denied to the Atlanta and Richmond Air-Line Railway Company against the collection of the tax, although illegal, no certain adequate relief at law can be had for the recovery of the same, although illegally collected, unless the comptroller-general shall assent thereto and order the amount refunded.

XVII. That your orators having been informed of the tax assessed, and the penalties added thereto, and payment of which was about to be enforced on the property of the said Atlanta and Richmond Air-Line Railway Company, and being advised that the said company was exempted, by law, from liability for said tax, and the penalties thereon as well, made application to the president and directors of the said company to resist the payment thereof.

XVIII. That they informed your orators that they had no means with which to resist the collection of the said tax. That the statutes hereinbefore referred to had taken from them the right hitherto enjoyed by any corporation within or citizen of the State, to submit to the courts of the State the question of the legality of a tax about to be enforced; and that such right was now denied to the Atlanta and Richmond Air-Line Railway Company, and that under such circumstances they did not know what opposition they could make to the collection of the said tax. That when forced to pay the same they did not know what measures they could adopt to recover back the money if paid, or their property if sold. That, as they were advised, if they had any remedy whatever, it was an action against the tax collectors, but that when repayment of money was ordered to be made by these officials, they were officers not able to respond to the payment of so large an amount. But that, moreover, the act did not even contemplate or allow a recovery against these officers, so that a judgment would affect them personally; for if a verdict was had against them, other legislative enactments professed to provide a mode in which the judgment should be satisfied; but that such mode was uncertain in all respects, and wholly inadequate to secure to the Atlanta and Richmond Air-Line Railway Company the repayment of the money if paid, or the recovery of its property if sold. That no repayment of money or recovery of property could be had under any circumstances, unless the State auditor directed it; and if he would direct it (a matter most improbable after he had decided that it should be assessed), it would then still

remain for the State to decide whether the money should be paid back if the money had been paid, or the property restored if the property had been sold. That this matter rested in the pleasure of the State, as the State could not be sued. And thus no certain or adequate means existed for the repayment of the money, although illegally collected, or the recovery of the property if illegally sold.

XIX. That under these circumstances a certain well-defined, legal right of great value to the Atlanta and Richmond Air-Line Railway Company, and to each and all of the stockholders thereto, a material part of a contract between the State of South Carolina and the said Atlanta and Richmond Air-Line Railway Company, is about to be violated and destroyed by the act of the legislature, in declaring, through the said board of equalization and the State auditor, that the property of the said corporation shall be assessed for taxes, and that the taxes assessed on such assessment shall be paid, or in default thereof that the property of the said corporation shall be sold. That the exemption of the property of the said corporation is set forth and declared in language plain and explicit, and such exemption was and is a legal right belonging to the said Atlanta and Richmond Air-Line Railway Company, and is of great value to it and to your orators and all other stockholders; that it is a material part of that contract which was made between the said State and the said corporation by the acts of the legislature of the said State for the incorporation of the said company, and the other acts relating thereto, and the assent to and the acceptance by the stockholders of the said company of the said exemption, by [illegible] and other acts done by the said company, by which [illegible] and by which it became a material part of the said contract between the said State and the said corporation, and the said corporation and the stockholders thereof, and your orators as such stockholders, have a vested right in the said exemption, and the said State cannot, by any act of the legislature, or by any other act, deprive your orators of the said exemption, or any part thereof, without violating the said contract, and impairing the obligation thereof, and depriving your orators of their property without due process of law, and without just compensation therefor, and in violation of the fourteenth amendment to the constitution of the United States, and of the constitution of the State of South Carolina.

three counties named; that besides your orator there are a large number of other stockholders, and that to pay the taxes in each of said counties and to necessitate the different stockholders to institute suits for their recovery would involve a multiplicity of suits; that if the defendant, the Atlanta and Richmond Air Line Railway Company, would institute suit to recover back the taxes illegally paid, it would be compelled to bring one against each of said five counties for the county tax and another for the State tax levied in each of said counties for State purposes. That if the road is, as your orator alleges, exempted from taxation, the decision of the question would exempt it from taxation by the corporation of the city of Greenville and the town of Spartanburg, and thus avoid a further multiplicity of actions.

XIII. And your orator further shows that the stock of your orator is a preferred stock, and that your orator has incurred large liabilities, and made heavy outlays on account of the defendant, the Atlanta and Richmond Air Line Railway Company, and the demand of this [illegible] the interest and lessens the market value of the property [illegible] of the said railroad, and the encouragement of the collection from [illegible] this injury to it is impairing its credit and taking from it the means of [illegible] and in raising stock necessary to carry on its business.

XIV. And your orator further shows unto your honors as ground [illegible] the interest of this court, that it does appear to him [illegible] another Corporation by and authority of an act of the Legislature of [illegible] South Carolina and the [illegible] and the General Assembly of the said State [illegible] Richmond Air Line Railway Company to build in said State [illegible] that the right to consolidate rested [illegible] the charter is fully [illegible] by the terms set forth [illegible]

[illegible]

30 Air Line Railway Company is a link in a great line of railroad whereof the road of your orators is also a link, and wherein your orators are immensely interested; and the said Atlanta and Richmond Air Line Railway Company being in need of aid, other stockholders and capitalists, who are well disposed to aid it, are naturally deterred by the apprehension of the sale of its property, or the necessity of paying so large a sum of money without a judicial decision of so important a right. And all this is done whilst, as your orators are advised and believe, there is a positive exemption from taxation of the said company, and an inhibition to the said company of all means by which it could in the courts of the State protect itself, by claiming the exemption in its charter, from the enforcement of such tax. All of which doings and actings on the part of the said defendants is contrary to equity and conscience, and tend to the manifest wrong and injury of your orators in the premises; and in the same they are remediless, save in this court, where matters of this kind are cognizable and relievable.

To this end, therefore, that the several parties named as de-
31 fendants may full, true, and perfect answer make to the premises; that the said Solomon L. Hoge, comptroller general, may be restrained and enjoined from certifying or giving any valuation of the property of the Atlanta and Richmond Air Line Railway Company to the county auditors; that the taxes thereon may be assessed and given to the county treasurers for the purpose of enabling them to col-

[illegible] writ of subpœna ad respondendum, directed to the said Solomon L. Hugo, comptroller general; Joseph F. Latimer, the county treasurer of Greenville County; J. F. F. Camp, the county treasurer of Spartanburg County; John L. Watson, the county treasurer of York county, to the Atlanta and Richmond Air Line Railway Company, the corporation of the city of Greenville, and the corporation of the town of Spartanburg, commanding them on a certain day, and under a certain penalty to be therein named, to be and appear before your honors in this honorable court, then and there true, direct, and perfect answer make to all and singular the premises, and to abide and perform such further order and decree in the premises as to your honors shall seem meet.

And your orators, as in duty bound, will ever pray, and so forth.

WM. E. EARLE,
*Complainant's Solicitor.*

Personally appeared before me A. S. Buford, president of the Richmond and Danville Railroad Company, the complainant in this bill of complaint, and says that the matters and things therein set forth, so far as they are within his knowledge, are true; and so far as they depend upon the knowledge and information of others, he believes them to be true.

[SEAL.] A. S. BUFORD,
*Pres. R. & D. R'd Co.*

WHITNER SYMMES,
*U. S. Comm'r.*

*Endorsement of bill.*

This copy is to be substituted, by agreement of counsel, for the original bill subsequent to 9th paragraph.

D. H. CHAMBERLAIN,
*Def'ts' Attorney.*

34 *Subpœna ad respondendum.*

Fourth circuit.

UNITED STATES OF AMERICA,
*State of South Carolina:*

The President of the United States of America to the Atlanta & Richmond Air Line Railway Company, a corporation under the laws of the State of South Carolina; the city of Greenvile, a municipal corporation under the laws of the State of South Carolina; Solomon L. Hoge, comptroller-general, a citizen of South Carolina; Joseph P. Latimer, county treasurer of Greenville County, a citizen of South Carolina; J. P. F. Camp, county treasurer of Spartanburg County, a citizen of South Carolina; John L. Watson, county treasurer of York County, a citizen of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday, the rules day of June, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all
35 such matters as shall be objected against you in the bill of complaint of the Richmond and Danville Railroad, a corporation chartered by and under the laws of and doing business in the State of Virginia. And also that you do, on the rules day next immediately after the day appointed and expressed, file or cause to be filed, in the registry of said court, your plea, answer, or demurrer to the said bill of complaint.

Herein fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-eight' year of the sovereignty and Independence of the United States of America.

[SEAL.] WM. E. EARLE,
*Complainant's Solicitor.*

J. E. HAGOOD,
*C. C. C. U. S., Dist. S. C.*

MEMORANDUM.—The defendants are to enter their appearance in this suit in the clerk's office on or before the first Monday of July,
36 the rules day in July, or the bill will be taken pro confesso.

*Marshal's return of service.*

Fourth circuit.

THE UNITED STATES OF AMERICA,
*District of South Carolina:*

THE RICHMOND AND DANVILLE RAILROAD Company, plaintiff,
*against*
THE ATLANTA AND RICHMOND AIR LINE Railway Company, Solomon L. Hoge, et al., defendant.

By virtue of authority from R. M. Wallace, marshal for this district, I have served J. P. F. Camp, treasurer of Spartanburg County, J. P.

Latimer, treasurer of Greenville County, and Solomon L. Hoge, comptroller-general of South Carolina, each personally with a copy of this subpœna ad respondendum.

WILSON COOK.

37 And on the 26th day of June, A. D. 1874, came into court the defendants, Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, & John L. Watson, by their attorneys, Melton & Chamberlain, and filed the following answer, which answer is in the words and tenor following:

*Answer.*

Circuit court, fourth circuit. In equity.

UNITED STATES OF AMERICA,
*District of South Carolina:*

THE RICHMOND AND DANVILLE RAILROAD Company, a body-corporate by and under the laws of the State of Virginia, complainant,
*against*
THE ATLANTA AND RICHMOND AIR-LINE Railway Company; the city of Greenville, a municipal corporation by and under the laws of the State of South Carolina; Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, and John L. Watson, citizens of South Carolina, defendants.

38 To the honorable the circuit judges:

The joint and several answer of Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, and John L. Watson.

I. Solomon L. Hoge, answering for himself, says that he is the comptroller-general of the State of South Carolina, and is by law charged with the duty of administering and enforcing the tax laws of the said State.

Joseph P. Latimer, answering for himself, says that he is county treasurer for the county of Greenville, in the said State, and is by law charged with the duty of collecting the taxes laid under the laws of said State upon the taxable property within the said county.

J. P. F. Camp, answering for himself, says that he is county treasurer for the county of Spartanburg, in the said State, and is by law charged with the duty of collecting the taxes laid under the laws of the said State upon taxable property within the said county.

John L. Watson, answering for himself, says that he is county treasurer for the county of York, in the said State, and is by law
39 charged with the duty of collecting the taxes laid under the laws of the said State upon taxable property within the said county.

II. These defendants, further answering, jointly say that it is true, as set forth in the said bill of complaint of the said above-named complainant, that the said Atlanta and Richmond Air-Line Railway Company is a body-corporate under the laws of the said State, doing business therein under a charter conferred by acts of the general assembly of the said State, and that the property of the said corporation lying within the

said State has been assessed for taxes in the manner set forth in the said bill of complaint, and under the authority of chapter XII, title III, of the general statutes of South Carolina, set forth more particularly in the said bill of complaint and of the act of the general assembly of the State of South Carolina, entitled "An act to reduce all acts and parts of acts providing for the assessment and taxation of property into one act, and to amend the same," approved March 19, 1874, to which said chapter XII, title III, of the general statutes and said act reference is hereby made.

40 III. That by the constitution of the said State, in Article XII, section 2, it is declared "that the property of corporations now existing, or hereafter created, shall be subject to taxation, except in cases otherwise provided for in this constitution," and that in Article IX, section 1, of said constitution, it is further declared, "The general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes," and that, saving and excepting these, no other exemptions are provided in said constitution.

IV. That it is true, as set forth in the bill of complaint, that the said Atlanta and Richmond Air-Line Railway Company, by the fourth section of the act of December 20, 1856, incorporating said company, were authorized to build said railroad, and "the same to equip, use, and

41 enjoy, with all the rights, privileges, and immunities granted to the Greenville and Columbia Railroad Company, and under the act incorporating the same, and the several acts amendatory thereof, so far as they may be applicable to the purposes of the charter hereby granted"; that it is moreover true that the said Greenville and Columbia Railroad Company was by its charter exempted from taxation for a period of thirty-six years. But these respondents say that it was part of the charter of the said Atlanta and Richmond Air-Line Railway Company that the said charter should at all times remain subject to the legislative control by amendment, alteration, or repeal, and that, by subsequent legislation of said State, the exemption from taxation originally granted to the said Atlanta and Richmond Air-Line Railway Company became extinguished and repealed.

V. Further answering, these defendants say that the property of the said Atlanta and Richmond Air-Line Railway Company was liable to be assessed for the taxes assessed, as set forth in said bill of complaint, at the time, in the manner, and to the extent therein set forth.

VI. Further answering, these defendants say that it is not true,

42 as set forth in said bill of complaint, that the complainants are without an adequate remedy at law for any wrong or injury which they may suffer at the hands of the State by reason of any illegal or erroneous assessment or collection of taxes upon the property of the said Atlanta and Richmond Air-Line Railway Company; on the contrary these defendants say that by the laws of the said State a plain, adequate, and convenient remedy for such wrongs or injury is afforded to the complainants.

VII. Further answering, these defendants say that it is not true, as set forth in the said bill of complaint, that the said assessment of taxes made by these defendants on the property of the said Atlanta and Richmond Air-Line Railway Company is in any manner a violation of sec-

tion 36 of the declarations of rights of the constitution of South Carolina, nor of the first section of article nine of said constitution; on the contrary these defendants say that the said assessment of taxes is made in all respects in conformity to the constitution and laws of said State.

Wherefore, having made, as they are advised, all needful answer
43 to the said bill of complaint of the above-named complainants, these defendants pray to be hence dismissed with their costs.

MELTON & CHAMBERLAIN,
*Defendants' Attorneys.*

THE STATE OF SOUTH CAROLINA,
*County of Richland:*

Personally appeared before me Soloman L. Hoge, one of the defendants herein named, who, being duly sworn, says that he is acquainted with matters stated in the foregoing answer; that the same is true to his own knowledge, except as to those matters stated on information and belief, and those he believes to be true.

S. L. HOGE.

Sworn to before me this 25th day of June, 1874.

[L. S.] JOHN L. LITTLE,
*Notary Public.*

*Trial of cause.*

And at the November term of the said court, begun and holden at Columbia for the district aforesaid, on the fourth Monday in Novem
ber, A. D. 1874, this cause came up for hearing, the bill being read
44 by W. E. Earle for complainant and the answer by honorable D. H. Chamberlain for defendants; and after hearing argument by W. E. Earle, for complainant, and by honorable D. H. Chamberlain, for defendants, the court rendered the following decree, which decree is in the words and tenor following:

*Decree.*

In the circuit court, fourth circuit.

UNITED STATES OF AMERICA,
*District of South Carolina:*

THE RICHMOND & DANVILLE RAILROAD COMpany, plaintiff,
*against*
THE ATLANTA & RICHMOND AIR-LINE RAILway Company, Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, and others, defendants.

November term, 1874. Present, Hon. H. L. Bond & Geo. S. Bryan, judges.

On hearing bill and answers and argument of counsel in this case, it is ordered, adjudged, and decreed that the Atlanta and Richmond Air-
Line Railway Company is by virtue of its charter exempted from
45 State, county, and municipal taxation within the limits of the State of South Carolina, for a period of thirty-six years, commencing from the date of its corporate existence.

Ordered further, that a writ of injunction, as prayed for in the bill, do issue against the following named defendants: Solomon L. Hoge,

comptroller-general of the State of South Carolina; Joseph P. Latimer, county treasurer of Greenville County; J. P. F. Camp, county treasurer of Spartanburg County, & John L. Watson, county treasurer of York County, and their successors in office, restraining them, or either of them, from proceeding to assess, levy or collect taxes from the said Atlanta and Richmond Air-Line Railway Company, and also against the said Atlanta and Richmond Air-Line Railway Company, prohibiting and restraining it from paying, or causing to be paid, the taxes which may have been, or may hereafter be, levied and assessed upon the property of said corporation, which it holds by virtue of its rights under the charter of the Greenville and Columbia Railroad Company, during the period of thirty-six years herein specified.

15th December, 1874.

HUGH L. BOND,
*C't Judge.*

46 Now comes D. H. Chamberlain, solicitor for defendant, Solomon L. Hoge, comptroller-general for the State of South Carolina, and prays an appeal from the foregoing decree to the Supreme Court, for errors therein.

15 Dec., 1874.

D. H. CHAMBERLAIN,
*Sol'r for def't Hoge.*

Appeal allowed.
15 Dec., 1874.

HUGH L. BOND.
*C't Judge.*

And on the 22nd day of November, 1875, came into court the defendants, by their attorneys, Melton & Chamberlain, & filed the following summons to join in appeal; which summons is in the words and tenor following:

*Summons to join in appeal.*

Fourth circuit.

UNITED STATES OF AMERICA,
*South Carolina district:*

The President of the United States of America to the Atlanta and Richmond Air-Line Railway Company & the city of Greenville, a municipal corporation by and under the laws of the State of South Carolina.

47 You and each of you are hereby summoned to be and appear before the judges of the Supreme Court of the United States, at the Capitol at Washington, D. C., on the day of next, then and there to join with Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, and John L. Watson in prosecuting an appeal from the decree of this court, granting a perpetual injunction against you and the said Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, and John L. Watson, on the complaint of the Richmond and Danville Railroad Company.

And, also, that you, and each of you do, within thirty days from the service hereof, file, or cause to be filed, with the clerk of the circuit court for said district, a notice of severance if you do not desire to be joined with the said Solomon L. Hoge, Joseph P. Latimer, J. P. F. Camp, and John L. Watson, as appellant, in the prosecution of the said appeal.

Witnesss the Honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in said South Carolina
48 district, the twenty-second day of November, 1875, and in the ninety-ninth year of the sovereignty and independence of the United States of America.

MELTON & CHAMBERLAIN.
*Defendants' attorneys.*

[SEAL.] J. E. HAGOOD,
*C. C. C. U. S., Dis't S. C.*

*Acceptance of service.*

I accept service for the Atlanta and Richmond Air Line Railway Company. Dec. 11, 1875.

WM. E. EARLE,
*Sol. for the Company.*

*Marshal's return.*

U. S. MARSHAL'S OFFICE,
*Columbia, So. Ca., Nov.* 29, 1875.

I hereby certify that by my deputy, John P. Scruggs, I did serve a copy of the within summons on William C. Cleveland, mayor of the city of Greenville, S. C., personally, at the city of Greenville, S. C., on 27th Nov., 1875, and leaving the said copy with him.

R. M. WALLACE,
*U. S. Marshal.*

49 In circuit court, fourth circuit.

UNITED STATES OF AMERICA,
*District of South Carolina:*

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing 48 pages of written matter is a true and correct copy of the proceedings and of the decree in the case of The Richmond and Danville Railroad Company, complainant, against The Atlanta and Richmond Air Line Railway Company, Solomon L. Hoge, comptroller gen'l, et al., defendants, rendered as aforesaid, together with all things relating to the same.

Given under my hand and seal of said court at clerk's office in the city of Charleston, S. C., this the 17th day of July, 1876.

[SEAL.] J. E. HAGOOD,
*C. C. C. U. S. Dist. S. C.*

50 UNITED STATES OF AMERICA,
*District of South Carolina:*

THE RICHMOND & DANVILLE RAILROAD COMpany, appellee,
*against*
SOLOMON L. HOGE, JOSEPH P. LATIMER, J. P. F. Camp, & John L. Watson, appellants.
} No. 673. In equity.

The above-named appellants having made with the said appellee satisfactory arrangements relative to the payment of such costs as

might be allowed them should the decree of this court be affirmed by the Supreme Court of the United States, security for the costs of said appellee is hereby waived, and the said appellants may prosecute their appeal in the said Supreme Court as though such security had been formally given.

July 21st, 1876.

WM. E. EARLE.
*Solicitor for Appellee.*

(Indorsed:) No. 674. Waiver of appeal bond. Filed 12 August, 1876.

(Indorsement on cover:) No. 134. Solomon L. Hoge, comptroller general of the State of South Carolina, appellants, vs. The Richmond and Danville Railroad Company. So. Carolina C. C. U. S. Filed 12th August, 1876.



# The United States of America,

## IN THE SUPREME COURT.

THE COMPTROLLER GENERAL OF THE STATE OF SOUTH CAROLINA *et al.*, *Appellants*,

*vs.*

THE RICHMOND & DANVILLE RAILROAD COMPANY.

## ARGUMENT

Of LeROY F. YOUMANS, Attorney General of South Carolina, for Appellants.

COLUMBIA, S. C.
PRINTED AT THE REPUBLICAN PUBLISHING HOUSE.
1879.

# In the Supreme Court of the United States.

THE COMPTROLLER GENERAL OF THE STATE OF SOUTH CAROLINA *et al.*, *Appellants*,

*vs.*

THE RICHMOND & DANVILLE RAILROAD COMPANY.

## ARGUMENT

Of LeRoy F. Youmans, Attorney General of South Carolina, for Appellants.

By Act of the General Assembly of South Carolina, December 20, 1856, 12 Stat., 508, "The Air Line Railroad Company in South Carolina" received a grant of a charter, and, by Section IV. of that Act, was invested with power to construct a Railroad, and the same to use, equip, and enjoy, with all the rights, privileges, and immunities granted to the Greenville & Columbia Railroad Company under the Act incorporating the same, and the several Acts amendatory thereof, as far as they might be applicable to the purposes of the charter granted "The Air Line Railroad Company in South Carolina." 1

By Section XVI. of the Act of December 15, 1845, 11 Stat., 329, incorporating the Greenville & Columbia Railroad Company, it was provided that during the first thirty-six years of its corporate existence, the stock of said Company and the real estate purchased by it, and connected with or subservient to its works, by said Act authorized, should be exempted from taxation. 2

By Section XXV. of the same Act, it was enacted, "that the said Greenville & Columbia Railroad Company shall be and is hereby excepted from the provisions of the forty-first section of an Act entitled 'An Act to incorporate certain villages, societies,

and companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted,' ratified on the seventeenth day of December, in the year of our Lord one thousand eight hundred and forty-one; *but nothing herein contained shall be construed to exempt the said Company from provisions of the said forty-first section, upon any future grant, renewal, or modification of their charter.*"

Section XLI. of Act of December 17, 1841, 11 Stat., 168, is as follows: "That it shall become part of the charter of every corporation which shall, at the present or at any succeeding session of the General Assembly, receive a grant or charter, or *any renewal, amendment, or modification thereof, (unless the Act granting such charter, renewal, amendment, or modification shall in express terms except it,)* that every charter of incorporation granted, renewed, or modified as aforesaid, shall at all times remain subject to amendment, alteration, or repeal by the legislative authority."

The charter of the Greenville & Columbia Railroad Company was amended by Act December 18, 1846, 11 Stat., 408, *with no exception of said Section XLI.;* by Act December 19, 1849, 11 Stat., 577, Section 7 of which excepted that Act and the several amendments of the charter from the provisions of said Section XLI.; and by Act December 20, 1853, 12 Stat., 288, Section VIII. of which again excepts said Company from said Section XLI.; by Act of December 21, 1854, 12 Stat., 341, *which contains no exception whatever from provisions of said Section XLI.;* by Act of December 21, 1865, 13 Stat., 287, 306, which, for the purpose of making a change in the location of the road, invests the Company with the rights, powers, and privileges given and granted it by the original charter and its amendments; by Act of December 20, 1866, 13 Stat., 395, 426, which contains no exception from said Section XLI.

The Convention of South Carolina, by ordinance March 15th, 1868, suspended and declared inoperative all Acts or pretended Acts of legislation purporting to have been passed by the General Assembly of the State since December 20, 1860, pledging the faith and credit of the State for the benefit of any corporate body or private individual until the General Assembly should assemble and ratify the same.

The General Assembly on February 6, 1869, 14 Stat., 183, 7
did reënact the Acts lending the name and credit of the State to the Greenville & Columbia Railroad Company—Section III. of which is as follows: "This Act shall not be of force until said Greenville & Columbia Railroad Company consent to the amendment of their charter, so that the property of said corporation shall be subject to taxation, in conformity with Section 2 of Article XII. of the Constitution, and said consent be certified, under the seal of said Company, to the Comptroller General and Secretary of State. Upon the filing of said consent, the said charter shall be deemed and held to be modified in conformity 8
with said Section of the Constitution."

The charter of "The Air Line Railroad Company in South Carolina" was amended by Act of September 18, 1868, 14 Stat., 75. which contains no exception whatever from said Section XLI.

On June 29, 1870, the Air Line Railroad Company in South Carolina consolidated and united with the Georgia Air Line Railroad Company, and the new Company thus formed is "The Atlanta & Richmond Air Line Railway Company."

The Constitution of South Carolina, April 16, 1868, Art. XII., Sec. 2, provides that "the property of corporations now existing 9
or hereafter created shall be subject to taxation, except in cases otherwise provided for therein," and by the Acts thereunder it has been sought to collect taxes from "The Atlanta & Richmond Air Line Railway Company" in precisely the same manner as from other Railroad Companies.

The Richmond & Danville Railroad Company, a body corporate in the State of Virginia, owner of certain stock of the Atlanta & Richmond Air Line Railway Company, alleging among other things that said last mentioned Company is exempt from taxation, and that there is no adequate remedy at law, filed its bill to 10
enjoin the collection of State and County taxes, and the Circuit Court has decided that the Atlanta & Richmond Air Line Railway Company is by virtue of its charter exempted from State, County, and municipal taxation within the limits of the State of South Carolina for a period of thirty-six years from the date of its corporate existence, and has ordered the writ of injunction prayed for to issue.

11 Appellants contend—

I. That the Atlanta & Richmond Air Line Railway Company is not exempt from taxation.

II. That even if so exempt, the order for injunction should not have issued.

I.

The Bill does not set up a case claiming that the Air Line Railroad Company was, or that the Atlanta & Richmond Air Line Railway Company is, excepted from the provisions of Section XLI. of the Act of 1841. The only one of the rights,
12 privileges, and immunities granted to the Greenville & Columbia Railroad Company on which the Bill claims exemption from taxation, is that contained in Section 16 of the original charter of that Company, to wit, that for the first thirty-six years of its corporate existence its stock and real estate purchased by it, connected with and subservient to its works, shall be exempt from taxation; see Section IV. of the Bill, transcript of Record, page 2, folios 5 and 6, Section XLI. of the Act of 1841; therefore, so far as the case made is concerned, constituted the con-
13 dition upon which the charter of the Air Line Railroad Company in South Carolina was held, and upon which the amendment was made. Its provisions were as operative and as much a part of the charter and amendment as if incorporated into them. The power reserved to the State by that Section authorized any change in the charter as it originally existed, or as subsequently modified, or its entire revocation. The reservation affects the entire relation between the State and the corporation, and places all the rights, privileges, and immunities derived by the charter under the State's control.

14 The exact point was decided in Tomlinson *vs.* Jessup, 15 Wallace, 457. But even had the Bill set up a case resting on the allegation, that the charter of the Air Line Railroad Company was excepted from Section XLI., Appellants contend that to incorporate such a provision by such implication into a charter is not warranted by any rules of law upon the subject of grants by implication. All grants of special powers or exemptions to individuals or corporations are always construed strictly as against the grantees and in favor of the State. Jackson *vs.* Lamphire, 8 Pet., 289; Beatty, the Lessee of Knowles, 4 Pet., 168; Bank

*vs.* Bettings and Pittman, 4 Pet., 514; Charles River Bridge *vs.* Warren Bridge, 11 Peters, 544. 15

And more especially where the State's right of taxation is concerned, implication is never admitted to create or continue an exemption from taxation.

The Court in Tomlinson *vs.* Jessup, 15 Wallace, 458, says: "There is no subject over which it is of greater moment for the State to preserve its power than that of taxation."

Such exceptions are uniformly and emphatically restricted to clear and unambiguous grants in express words; West Wisconsin R. R. Co. *vs.* Supervisors, 3 Otto, 597. 16

But by the express provisions of Section XLI., the exception to its operation must be in express terms and in the acts granting the charter, renewal, amendment, or modification thereof. There is no such express exception in the Act chartering the Air Line Railroad Company. There was no exception whatever in the Acts of December 18, 1846, and December 21, 1854, amending the charter of the Greenville & Columbia Railroad Company; so that when the Air Line Railroad Company was chartered December 20, 1856, it was not one of the rights, privileges, or immunities of the Greenville & Columbia Railroad Company to be exempt 17 from Section XLI.; and consequently, the Air Line Railroad Company was not exempt therefrom. There was no necessity for passage of Act of February 6, 1869.

This is clear, both from said Section XLI. and from the concluding provision of Section XXV. of the original Act of incorporation of the Greenville & Columbia Railroad Company. Even had this been otherwise, the same result would have followed on the passage of the Act September 18, 1868, amending the Act incorporating the Air Line Railroad Company, because it contained no clause excepting the Company from said Section XLI. 18

Whatever exemption the Air Line Railroad Company may have had, does not enure to the Richmond & Atlanta Air Line Railway Company. Morgan *vs.* Louisiana, 3 Otto, 217.

## II.

The remedy by injunction cannot be obtained in this case under Dows *vs.* Chicago, 11 Wallace, 108, in which this Court laid down with precision the rules governing the use of injunction

to restrain the collection of taxes, and adopted the distinctions made in Heyward *vs.* Buffalo, 14 New York, 534.

Parties aggrieved have their Common Law and Statutory remedies. Secs. 8, 63, 64, Ch. XIII., Title 3, Gen. Stats., So. Ca.

Act February 28, 1870, Gen. Stats., Title 3, Ch. XIII., Sec. 62, is constitutional (State *vs.* County Treasurers, 4 So. Ca., 520) and valid. Wilson *vs.* Mayor of New York, 1 Abbott's Practice Reports, 4; Tennessee *vs.* Sneed, 6 Otto, .

Nothing in the Acts violates the constitutional provisions as to taxing property in proportion to value and uniform and equal rates. Dillon Munic. Corp., Sect. 549, p. 564; Gilman *vs.* Sheboygan, 2 Black., 510; Exchange Bank of Columbus *vs.* Hines, 3 Ohio State Repts., 1; State *vs.* Hayne, 4 So. Ca., 403; State *vs.* Columbia, 6 So. Ca., 1.

LEROY F. YOUMANS,
*Attorney General So. Ca.*

# IN THE

# Supreme Court of the United States.

**No. 134.**

SOLOMON L. HOGE, COMPTROLLER, *et als.*

*vs.*

THE RICHMOND & DANVILLE RAILROAD COMPANY.

## APPELLEE'S BRIEF.

The question involved in this case, is the exemption from taxation in South Carolina for thirty-six years from the date of its incorporation in 1856, of so much of the property of Atlanta and Richmond Air Line Railway Company as lies within the borders of that State.

The following extracts from State Statutes will be referred to:

By an Act of the General Assembly of South Carolina, ratified December 20, 1856, (12 Statutes at Large, 508,) the corporation was chartered under the name and style of the "Air Line Railroad Company in South Carolina."

By Section 7 it was empowered to "combine or unite with any other railroad company," and to consolidate the management. By an amendment to said charter, approved September 18, 1868, reference being made to the power of consolidation, it was authorized to "adopt such other or modified corporate name as shall be deemed best."

By Section 4 of the Act of Incorporation, (December 20, 1856,) the line of Railroad is indicated and power and authority given "the same to equip, use and enjoy with all the rights, privileges and immunities granted to the Greenville and Columbia Railroad Company, and under the Act incorporating the same and the several Acts amendatory thereof so far as they may be applicable to the purposes of the charter hereby granted."

The Greenville and Columbia Railroad was incorporated by an Act of the General Assembly of South Carolina, December 15, 1845.

By Section 16, it was provided "that the stock of the said Company and the real estate that may be purchased by them, and be connected with or subservient to their works hereby authorized, shall be exempted from taxation for the term of thirty-six years, to be computed from the time of the corporate existence of the Company."

By the 25th Section of this Act, (1845,) it was provided, "that the said Greenville and Columbia Railroad Company shall be and is hereby excepted from the forty-first section of an Act entitled an Act to incorporate certain villages," &c. passed 1841.

The 41st Section of the Act of 1841, is as follows:

"Be it further enacted, that it shall become part of the charter of every corporation, which shall at the present or any succeeding Session of the General Assembly, receive a grant of a charter, or any renewal, amendment or modification thereof, (unless the Act granting such charter, renewal, amendment or modification shall in express terms except it;) that every charter of incorporation granted, renewed or modified as aforesaid, shall at all times remain subject to amendments, alterations or repeal by the Legislative authority."

The proceeding in the Circuit Court was instituted by the Richmond and Danville Railroad Company, a Virginia corporation, holding stock in the Atlanta and Richmond Air Line Railway Company, a South Carolina corporation, to enjoin the Appellants, who were the collectors—from collecting taxes from the said Air Line Railway Company, which the Appellees contend is exempt from taxation for the period of thirty-six years from the date of its

charter. This claim to exemption was sustained by the Court below, and from its decree the Comptroller-General and the other Defendants, who were the tax-collectors for the several counties through which the Air Line Road passes, have taken this appeal.

The claim to exemption is based upon the fourth section of the charter of the Air Line Railway Company in South Carolina, by which that Company is granted, "*all the rights, privileges and immunities granted to the Greenville and Columbia Rail-road Company, and under the Act incorporating the same.*"

These terms are broad and comprehensive. By them, we are referred to the charter of the Greenville and Columbia Railroad, to ascertain what are the "*rights, privileges and immunities,*" of that Company.

We shall afterwards consider whether there has been anything to restrict the general grant of these rights, privileges and immunities to the Air Line Railroad Company.

Among these privileges and immunities, granted to the Greenville & Columbia R. R. Co., there are two with which we are specially concerned in this case. The first is the exemption from taxation; the second, the exemption or immunity from liability to the repeal or alteration of its charter—which by a general law of the State, is a condition annexed to all charters granted since 1841.

It is admitted in the answer of the Defendants [Record, p. 41,] that the exemption from taxation granted to the Greenville and Columbia Railroad, is one of the immunities granted by its charter to the Air Line Road; but it is denied that the immunity of its charter from repeal or alteration, which was granted to the Greenville and Columbia Railroad Company, was an immunity also granted to the Air Line Railway Company; and it is claimed that this liability of its charter to repeal, enables the State at any time to strip the Air Line Road of all the immunities which were granted in that charter, and that by the Act of 1868, subjecting all the property in the State to taxation, this exemption has been repealed.

The contention of the Appellees, the owners of the Air Line Road is the converse of this.

They claim that among the most valuable of the privileges and immunities granted to the Greenville and Columbia Railroad was its exemption from taxation for thirty-six years, and the guarantee from the State that notwithstanding the general law which made this grant of exemption revocable—the right should be assured to them, and their charter should be excepted from the operation

of this general law. The first of these provisions exempted the property of the company from taxation for thirty-six years, unless sooner revoked—the second surrendered the power of revocation. The two together constituted a most valuable "right, privilege and immunity," and created a contract between the State and the Greenville and Columbia Railroad Company, the binding effect of which has been affirmed by the Supreme Court of the State, in The State *vs.* Hood, 15 Richardson's R., 177.

It was to this charter, that the Legislature referred, as the standard by which were to be determined, the rights, privileges and immunities granted to the Air Line Railway Company.

The propositions which we desire to maintain to establish our position are:

1. That the Greenville & Columbia R. R. Co. was exempted from taxation by its charter for thirty-six years.

2. That its charter was exempted from liability to repeal, under the Act of 1841.

3. That both of these immunities continued unimpaired up to 1856.

4. That in 1856, the Air Line Rail Road Co. in South Carolina, was granted all the rights, privileges and immunities of the Greenville & Columbia R. R. Co.

5. That it had not lost its exemption when it united with the roads in Georgia and North Carolina, to form the Atlanta & Richmond Air Line Railway Co., which its charter authorized it to do.

6. That it carried to this association the exemption and immunities which attached to the property in South Carolina.

And, as a consequence: That the Atlanta and Richmond Air Line Railway Company's property in South Carolina, is exempt from taxation for thirty-six years, from 1856, the date of the charter.

(1, 2.) The first and second of these propositions are admitted.

(3.) To sustain the third it is only necessary to advert to the fact that the amendments to the charter of the G. & C. Railroad, had

coupled with them, a condition that they also were excepted from the effect of the Act of 1841, which would otherwise have rendered them subject to repeal, and as a further recognition of its right to exemption, the Legislature of South Carolina on 6th of February, 1869, purchased from the Greenville & Columbia R. R. Co, the surrender of their exemption by giving it the State's endorsement on its bonds.

(4.) To sustain the fourth proposition we can hardly do more than call attention to the language of the Act, granting the charter to the Air Line Railway Co. It is given the right to construct a Railroad, "and the same to equip use and enjoy *with all the rights, privileges and immunities granted to the Greenville and Columbia Railroad Company, and under the Act incorporating the same, and the several Acts amendatory thereof,*" &c.

The case of Humphreys vs. Pegues, 16 Wallace, 247, sustains a claim for exemption, which was granted in the same manner and in almost the same terms.

The Cheraw and Darlington Railroad Company was incorporated in South Carolina, in 1849.

The North-Eastern Railroad Company was incorporated in the same State, in 1851.

In 1855, the North-Eastern Railroad was, by an amendment to its charter, exempted from taxation.

In 1863, the Cheraw and Darlington Railroad was, by an amendment to its charter, granted all the *powers, rights and privileges*, which had been granted by the charter to the North-Eastern Railroad.

This Court held that this reference was sufficient to grant to the Cheraw and Darlington Railroad, not only the powers, rights and privileges which were contained in the charter of the North-Eastern Road, but also those contained in the amendment to the charter, among which was included a perpetual immunity from taxation, than which, says Mr. Justice Hunt, in delivering the opinion of this Court, "a more important or more comprehensive privilege can scarcely be imagined."

We have already attempted to show that the most valuable of all the rights and immunities were the exemption from taxation for thirty-six years, and the immunity from liability to have their exemption revoked. To withhold either of these was not to grant *all* the rights and immunities, which were granted to the

Greenville & Columbia R. R. As if to enlarge the grant to the Air Line Company, there is added after the specification of the rights, privileges and immunities, which were granted to the Greenville & Columbia R. R. Co., "and *under* the Act incorporating the same," as if there might be rights, privileges and immunities granted under the Act, in addition to those specifically granted to the Greenville & Columbia R. R. Co. If there are any such, this exemption of the Act from repeal might well be claimed to be one of them.

It may be objected that the exemption from liability to repeal is required by the Act of 1841, to be in express terms.

This argument we respectfully contend would be entitled to more weight if we were seeking to establish an exemption by inference.

For example: the granting of a charter to run for forty years, might imply that during those forty years the State was not to vary its contract with the Company, but unless the charter contains an exception from the operation of the Act of 1841, this inference might be forbidden because the exemption from liability to repeal must be express.

Apart from the Act of 1841, it could not be denied that the language is broad enough to give every right, privilege and immunity including both the exemptions from taxation and repeal which are granted to the Greenville & Columbia R. R.

If the existence of the Act of 1841, is in conflict with this most obvious construction, then that Act withholds, what the charter itself grants. There is a conflict between the two; the Act of 1841 says its charter shall be subject to repeal, the charter itself says it shall not. In such a conflict, not between a constitutional provision and an Act of the Legislature, but between two Acts of the Legislature, the last will control.

"The case before us differs from those in which by the Constitution of some of the States, this right to alter, amend and repeal all laws creating corporate privileges, becomes an inalienable Legislative power. The power thus conferred cannot be limited or bargained away by any Act of the Legislature, because the power itself is beyond Legislative control. The right asserted in this case to amend or repeal Legislative grants to corporations, being itself but the expression of the will or purpose of the Legislature, in one particular session or term of the State of New Jersey, cannot bind any succeeding Legislature, which may choose to make a grant or a contract not subject to be altered or

repealed, or if any succeeding Legislature to that of 1846, which enacted that 'the charter of every corporation which shall hereafter be granted by the Legislature, shall be subject to alteration, suspension and repeal in the discretion of the Legislature,' shall grant a charter or amend a charter, declaring in the Act that it shall not be subject to alteration and repeal, the former Act is of no force in that case."

New Jersey *vs.* Yard, 95 U. S., 111.

The Act of 1841 is applicable to all charters, to which the Legislature granting them intends it shall be applicable, and to none others. If the Legislature intends it shall be applicable, it is not necessary to say so; by its existence on the Statute books it becomes so, but if a subsequent Legislature intends that it shall not be applicable, they are not confined to any particular form of expression for taking their enactments out of the control of the legislation of 1841.

The question then is narrowed down to the intention of the Legislature which granted the charter of Air Line R. R.

If it intended to grant to this company an immunity from the repeal of this exemption from taxation for thirty-six years, then it did grant it, and the grant is valid.

The Legislature did not in express terms grant an exemption from taxation, yet such exemption is admitted. It did not in express terms suspend the Act of 1841, yet if in apt words it showed its intention to suspend that Act, then no restrictions imposed by the Legislature of 1841, can defeat the clear intention of the Legislature of 1856.

(5.) If this exemption from taxation and repeal was conferred upon the Air Line Rail Road Company in South Carolina, it continued unimpaired up to the time of the consolidation with the company chartered by the State of Georgia, which formed the Atlanta & Richmond Air Line Railway Company, a consolidation which by section seven of the South Carolina charter, it was authorized to make.

(6.) That when the Air Line Rail Road in South Carolina was consolidated to form the Atlanta and Richmond Air Line Railway Company, it carried to the Consolidated Company the exemption which attached to the property in South Carolina.

This is established by the decision of this Court, in

Tomlinson *vs.* Branch, 16 Wall., 400.

The equities of the case are certainly with the Appellees, who have invested their money in the construction of this road upon the faith that until it was established in its business, it would be exempted from taxation. And the State has by her several enactments provided for the assessments of all the property of the company, and the collection of taxes thereon, which will be operative and effective, as soon as the period limited for the exemption has expired.

SKIPWITH WILMER,

*for Appellee.*

Jany 22. 79.

IN THE

# Supreme Court of the United States,

No. 134.

THE COMPTROLLER GENERAL OF SOUTH CAROLINA

*vs.*

THE RICHMOND AND DANVILLE RAIL ROAD CO.

By the permission of the Court, the Appellees have printed the following extracts from the Statutes of South Carolina:

*Act of* 1843, (11 *Statutes, p.* 274.)

SEC. III. The said South Carolina Rail Road Company is hereby excepted from the provisions of the forty-first section of an Act, entitled "An Act to incorporate certain villages, societies and companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted, ratified on the 17th day of December, in the year of our Lord one thousand eight hundred forty-one," but nothing herein contained shall be construed to exempt the said Company from provisions of the said forty-first section upon any future grant, renewal or modification of their charter.

"The third section of the Act of 1843 clearly withdraws from the operation of the Act of 1841 (by which power to amend or repeal is reserved,) the entire charter of the Company, except as to future grants, renewals and modifications. Such future grants only were to be subject to alteration and repeal."

Tomlinson *vs.* Branch, 16 Wall., 400.

*Act of* 1845, (11 *Statutes, p.* 324.)

SEC. XXV. That the said Greenville and Columbia Rail Road Company shall be and is hereby excepted from the provisions of the forty-first section of an Act, entitled "An Act to incorporate certain villages, societies and companies, and to renew and amend certain charters heretofore granted, and to establish the principles on which charters of incorporation will hereafter be granted, ratified on the 17th day of December, in the year of our Lord one thousand eight hundred and forty-one;" but nothing herein contained shall be construed to exempt the said Company from provisions of the said forty-first section, upon any future grant, renewal or modification of their charters.

*Act of* 1853, (11 *Statutes at Large, page* 288.)

VIII. That the said Greenville and Columbia Rail Road Company shall be and is hereby exempt from the provisions of the Forty-first Section of an Act entitled "An Act to incorporate * * * * * ratified on 7th day of Dec., 1841."

*Act* 1856, (12 *Statutes at Large*, 508.)

Incorporating the Air Line Rail Road Company, and authorizing it to unite and combine with any other Rail Road Company.

Sec. 4. Gives power and authority "the same to equip, use and enjoy with all the rights, privileges and *immunities* granted to the Greenville and Columbia Rail Road Company, and under the Act incorporating the same and *the several Acts amendatory* thereof, so far as they may be applicable to the purposes of the charter hereby granted."

SKIPWITH WILMER,

*For Appellee.*

# The United States of America,

## IN THE SUPREME COURT.

THE COMPTROLLER GENERAL OF THE STATE OF SOUTH CAROLINA *et al.*, *Appellants*,

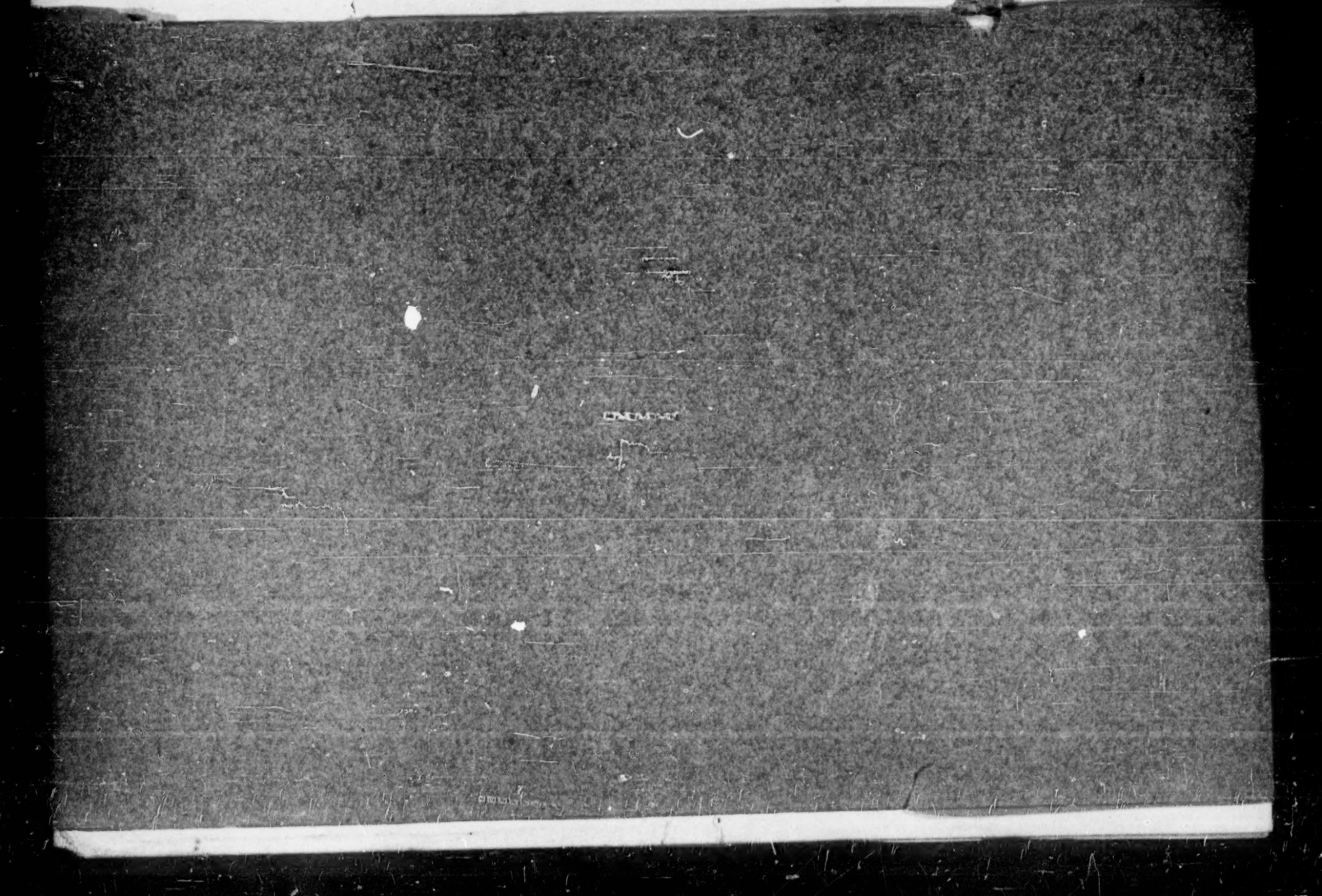
*vs.*

THE RICHMOND & DANVILLE RAILROAD COMPANY.

# ARGUMENT

Of Wm. E. Earle for the Defendent in Error.

COLUMBIA, S. C.
PRINTED AT THE PRESBYTERIAN PUBLISHING HOUSE.
1879.



# In the Supreme Court of the United States.

THE COMPTROLLER GENERAL OF THE STATE OF SOUTH CAROLINA *et al.*, *Appellants*,

*versus*

THE RICHMOND & DANVILLE RAILROAD COMPANY,

## Argument of Wm. E. Earle for the Defendant in Error.

The Defendant in Error claims the exemption under the following circumstances: 1

By the Act of Assembly of December 20, 1856, the Air Line R. R. Co. in South Carolina was chartered and authorized to combine or unite with any other railroad. By Act of Sept. 18, 1868, reference being made to this power of consolidation, the Company was authorized to "adopt such other or modified cor-"porate name * * * as shall be deemed best." Up to this time please bear in mind that nothing was done towards the construction of the Road, as this will be of importance hereafter. 2

Subsequently the "Air Line R. R. in South Carolina" did consolidate with the "Georgia Air Line R. R.," and adopted the corporate name of "The Atlanta and Richmond Air Line Railway Company." This new Company had however the same privileges and the same obligations as the original Company had.

Its "corporate rights and franchises, which appertain to its "existence and functions as corporation, have become extinct. But "all its rights and duties, its privileges and obligations, as related "to the public, or to third persons, remain and devolve upon the "new Company." *Vide* Tomlinson *vs.* Brand, 15 Wall, 465; and The Phila., Wilmington & Balt. R. R. Co. *vs.* Maryland, 10 Howard, 376. By Sec. 4 of aforesaid Act of Dec. 20, 1856, the line of the Road was indicated and power and authority given "the same to equip, use and enjoy, with all the RIGHTS, "PRIVILEGES, and IMMUNITIES granted to the Greenville & Co-"lumbia R. R. Co., and under the Act incorporating the same and "the several Acts amendatory thereof, so far as they may be 3

4 "applicable to the purposes of the charter hereby granted." By Section 9 of this Act of incorporation it is declared a public Act and continued in force for 100 years.

The measure of the liability of the Atlanta & Richmond Air Line Railway Co. is the liability of the Greenville & Columbia R. R. Co.; and to ascertain now what are the RIGHTS, PRIVILEGES, and IMMUNITIES which are herein granted to the Atlanta & Richmond Air Line Railway Co., we must consult the charter of the Greenville & Columbia R. R. Co.

By the Act of Dec. 15, 1845, Sec. 16, the Greenville & Co-
5 lumbia R. R. Co., the stock and real estate of that Company are exempted from taxation "for the period of thirty-six years, to be "computed from the time of the corporate existence of the Com- "pany." By Sec. 25 the Company is excepted from the operation of Sec. 14 of the Act of 1841, which we shall have occasion to refer to again. The whole of this Act, with some additions, was reënacted in 1846. In 1849 it was amended, and Sec. 7 excepts it from the operation of the 41st Section of the Act of 1841. In 1853 it was amended, and Sec. 8 excepts it from the operation of the 41st Section of the Act of 1841. These are all
6 of the amendments prior to the incorporation of the Atlanta & Richmond Air Line Railway Co.

The Supreme Court of South Carolina, in January, 1868, decided in the case of The State *ex rel.* The Greenville & Columbia R. R. Co. *vs.* Hood, State Treasurer, 15 Rich., 177, that the stock of the Greenville & Columbia R. R. was exempted from taxation under the Act of 1845 (11 Stat., 359), and that it was also exempted therefore from tax on its gross income.

So far then as the Greenville & Columbia R. R. Co. was concerned, it stood just as if the 41st Section of the Act of 1841 had
7 never been enacted.

It had RIGHTS, PRIVILEGES, and IMMUNITIES. All of these the Atlanta & Richmond Air Line R. R. Co. received One of the highest of these was the privilege of exemption from taxation. Mr. Justice Hunt, in Humphrey *vs.* Pegues, says: "A more important or more comprehensive privilege than a per- "petual immunity from taxation can scarcely be imagined." If there *it* was conveyed to us in the "immunity" which the Greenville & Columbia R. R. had, possessed, enjoyed, and sold for a

good and valuable consideration, viz., the "immunity" from the operation of the 41st Section of the Act of 1841. 8

Since the decision of Tomlinson *vs.* Jessup (15 Wallace), we shall not argue that the Act of 1841 was not a public Act of general application, nor will we argue that it did not become a part of the charter granted to all corporations subsequently, unless they were specially exempted from its operation. The purpose of this Section 41 seems to have been rather to guard against careless legislation than an attempt to bind subsequent Legislatures against improvident and unwise exemptions, for in the Section itself is found these words: "Unless the Act granting "such charter, renewal, amendment or modification, shall in 9 "express terms except it." And in this case, too, in the opinion delivered by Mr. Justice Field, he says, referring to the amendment of the charter of the Northeastern Railroad which exempted it from taxation: "This Act contained no clause excepting the "amendment from the provisions of the general law of 1841. It "was therefore itself subject to repeal by force of that law." From this decision, then, we may deduce the conclusion that, if the Act of 1855, which exempted the Northeastern Railroad from taxation, had been *excepted* from the operation of the general law of the 41st Section of the Act of 1841, that corporation 10 would have been declared exempt from all liability to taxation, notwithstanding the various material amendments to its charter. The question here involved has been practically decided by this Court, and upon terms much less comprehensive than those used in our charter. Let us examine those cases. In Tomlinson *vs.* Jessup, the Northeastern R. R. Co. was declared liable to taxation. It was incorporated by Act of Dec. 16, 1851. This charter was amended Dec. 19, 1855, and *in this amendment* it was exempted from taxation, *but not excepted* from the operation of the *41st* Section of the Act of 1841. This was a new privilege 11 not contemplated in the original charter, and it was granted without any exaction of new service or duty, and this Court declared that it was liable to be taken away. The exemption being in the amendment it was without consideration. We infer that it would have been different if the exemption had been in the original Act of incorporation; not only on account of the language used, but for the reason also that if it had been in the original charter there would have been a consideration for it. In

12 the Ohio Life Insurance and Trust Co. *vs.* Debolt, 16 Howard, 437, the Court says: "Every contract in the nature of a charter "of incorporation is given, or supposed to be given, by the corpo- "ration, that the community is to receive from it some public "benefit which it could not obtain without the aid of the "Company."

Now, the exemption of the Atlanta & Richmond Air Line Railway Company was in its original charter. It was to encourage the investment of capital not only in building a railroad through a section of the State almost without railroad connection,
13 but to induce the building through the State of an especial link in the shortest line between New York and New Orleans.

The contract was based upon a most valuable consideration The exemption was given by a grant of the RIGHT, PRIVILEGES, AND IMMUNITIES of a Company which was entirely excepted and free from the operation of the 41st Section of the Act of 1841. This argument is not only strengthened, but is fully sustained, by the exemption of the Cheraw & Darlington R. R. Co. by this Court upon a grant of the "powers, rights, and privileges" of this same North Eastern R. R. Co. Now, let us see that case. It is
14 the case of Humphreys *vs.* Pegues, 16 Wallace, 244. The Cheraw & Darlington R. R. Co. was granted the "powers, rights, and privileges" of the Wilmington & Manchester R. R. Co. on December 19, 1849. Now, as is said in the opinion, "from 1849 "to 1863, no sufficient inducements had been found to procure "the building of the Cheraw Road." It had not been undertaken. In that year it was given the "powers, rights, and privileges" of the North Eastern R. R. Co. Amongst these was the "privilege" in the amendment of the North Eastern charter in 1855 of *perpetual* exemption from taxation. It was on the
15 faith of this contract in that Act that the Cheraw & Darlington R. R. was built, and this Court held it perpetually exempt, notwithstanding the North Eastern R. R. Co. was not excepted from the operation of the 41st Section of the Act of 1841. How very much stronger is the right of the Atlanta & Richmond Air Line R. R. Co.! The words used are not the "*powers*, rights, and privileges," but "rights, privileges, and IMMUNITIES"—and these of a Company which never was subject to the operation of the 41st Section of the Act of 1841, but which surrendered its "immunity" from taxation to the State in exchange for a heavy endorsement of her bonds.

The distinction between a privilege granted in an amendment, by which the grantor gained nothing and the grantee loses nothing—a grant which is in the nature of a *nudum pactum* (see Miller *vs.* Wryman, 3 Pick., 211)—is marked and fully recognized. Where the exemption is granted as a part of the original Act of incorporation, or it is in an amendment which requires new duties, the benefit to accrue to the State as the new duties imposed on the grantee, constitutes a consideration for the privilege and immunity which makes the contract irrevocable. "Such an "exemption as would deprive the Legislature of the power of "taxation, could only be claimed on the ground that it did *at* "*the time of the grant* form a condition, or else a consideration "of such grant, for it is only to that extent that legislative "grants have been considered contracts within the meaning of "the United States Constitution, prohibiting the State from "passing any law impairing the obligation of contracts." Herrick *vs.* Rutland, 10 Vermont, 530.

And again the same Court says, as to decisions on the rights of perpetual exemptions from taxation, that they "do not affect to "justify even this express exemption from taxation being held "irrevocable, except upon the ground that it formed a part of the "value of the grant for which the State received or stipulated for "a consideration." Sharpe *vs.* Rutland & Burlington R. R. Co., 27 Vermont, 146. But this Court has itself spoken on this subject. In the Wilmington R. R. Co. *vs.* Reid, 13 Wallace, 264, this Court says: "There is no difficulty whatever in this case. "The General Assembly of North Carolina told the Wilmington "& Weldon Railroad Company, in language which no one can "misunderstand, that if they would complete the work of internal "improvement for which they were incorporated, their property "and the shares of their stockholders should be forever exempt "from taxation."

This "immunity" from the operation of a General Statute and "privilege" of exemption from taxation, like any privilege granted upon consideration and accepted by the grantee, is a contract irrevocable by the grantor. *Vide* Dartmouth College *vs.* Woodward, 4th Wheaton, 518; Fletcher *vs.* Peck, 6 Cranch 87 and 136.

Undoubtedly special grants of powers and exemptions from general rules and laws are construed most strictly against the grantee, but this rule of construction can never be strained to the

20 extent of preventing the plain expression of the legislative will upon which the grantee has acted, nor of revoking a contract.

Now in the case at bar the exemption was given in the original Act of incorporation. It was given the RIGHTS PRIVILEGES, and IMMUNITIES of the Greenville & Columbia R. R. Co. This Road was exempted from taxation for thirty-six years, and as to it, practically, at the time of the granting of our charter, December 20, 1856, the 41st Section of the Act of 1841 had no applicability.

The question now is really, whether under the "RIGHTS, PRIVI-
21 LEGES, and IMMUNITIES" granted to us of the Greenville & Columbia R. R., we did not take its "privilege" of exemption from taxation and its "immunity" from the operation of Sec. 41 of the Act of 1841.

Wm. B. Earle

April 18. 79. Arg'd U. St. Co.

9 Otto p. 355
Oct. T. 1878

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 240.

JAMES W. DENVER AND CHARLES F. PECK, APPELLANTS,

vs.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED OCTOBER 14, 1876.**

Rec'd 217. 74. Lamar. Case.

# SUPREME COURT OF THE UNITED STATES.

## No. 240.

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vs.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, DECEASED.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Bill of complaint.—Filed April 29, 1874.*

In the supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR,
*vs.*
CHARLES F. PECK AND JAMES W. DENVER. } 3706. Equity dock. 13.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The bill of complaint of Archibald Roane, executor of James Hughes, deceased, against James W. Denver and Charles F. Peck, defendants, respectfully shows to your honors:

1st. All of the parties to this suit are citizens of the United States, as was also said James Hughes, deceased.

2d. The plaintiff further shows that some time in the year eighteen hundred and sixty-four or sixty-five, the said James Hughes, then being possessed of a large political and legal reputation, and occupying a judicial position as one of the judges of the United States Court of Claims, resigned his said office, and resumed his practice as a lawyer, and subsequently associated with him in his business, for the more convenient and advantageous conduct thereof, the defendants, James W. Denver and Charles F. Peck, without any written articles of agreement of copartnership, and under the name and style of "Hughes,
2 Denver and Peck," as equal copartners, entered upon a highly lucrative and valuable legal practice before the departments of the United States, and in the various courts of the United States, particularly in the Court of Claims and the Supreme Court of the United States, in all of which practice the said Hughes, from his professional attainments, ability, and reputation, held in said firm a leading and directing interest and control, and attracted to it a the United States which in a short time so increased as to require the very large amount of important and valuable business from all parts of employment of clerks to care for the details attending the same; that said business became and was highly profitable to said firm, and yielded throughout the continuance of the united labors of the several members of said firm a large income.

3d. The plaintiff says further that the said Hughes, and also the said defendants, contributed out of the profits, and at times out of their private incomes, large sums of money to defray the expenses of the office, and to collect testimony and prepare their causes for proper presentation in the various tribunals in which they were to be adjudicated.

4th. The plaintiff further shows that some time in the year eighteen hundred and sixty-five, the said firm being then in a prosperous condition, and having on its files numerous cases, some of them of great value, by mutual agreement of the said respective parties, written articles of agreement were entered into by them (a true copy of which is hereto annexed, marked Plaintiff's Exhibit, A. R., No. 1), which the plaintiff prays leave to read as part of his bill of complaint.

5th. The plaintiff is advised, and so charges, that by the terms of the third section of said articles it was expressly stipulated and agreed by the several parties thereto, by a just and legal interpretation, that
3 as to all the existing business of said firm it should be prosecuted to final settlement in the name of the firm, and on its joint account, in equal interest, in accordance with their original agreement under which the firm was formed and had for years continued in opera-

tion; and the plaintiff avers, charges, and offers to show and to prove that said articles were deliberately made and executed by the parties thereto and ratified by their uniform acquiescence, and, so far as the plaintiff is advised, they have never been brought in question by any of said parties.

6th. The plaintiff further shows that after the execution of the aforesaid written articles, dated March 18th, in the year eighteen hundred and sixty-nine (1869), the said James Hughes, in contemplation of a journey he was about to make, and in view of the unsettled condition of the said firm's business, addressed the letter of agreement to said Denver, a true copy of which is herewith filed, marked Plaintiff's Exhibit, A. R., No. 2, which the plaintiff prays leave to make a part of his bill of complaint; said letter bearing date August 13th, in the year eighteen hundred and sixty-nine, (1869).

He further shows by the several endorsements of the said parties respectively made thereon, as set out in said Exhibit No. 2, made part hereof, and by the return thereof by them to the said James Hughes so endorsed, a valid agreement was made between said Hughes and said Denver and Peck in the terms set out in said letter, and that the qualification over the signature of said Denver was no more than a statement of a legal proposition as to the effect of said agreement, and said Hughes at once accepted and retained the same as the basis of future operations of the three parties and the rates of their divisible interests respectively.

7th. The plaintiff avers, charges, and offers to show and to prove that he was clerk for said firm prior to, and was partner of said James
4 Hughes shortly after March 18th, 1869, and up to the day of his death, which event took place on the 21st day of October, in the year eighteen hundred and seventy-three; that he died testate, and by a codicil to his will, duly admitted to probate in your honorable court under its jurisdiction as a probate court for the District of Columbia, the testator appointed the plaintiff his sole executor as to business in Washington City, District of Columbia, and the State of Maryland, and the plaintiff prays leave to refer to the records of your honorable court for said will and codicil, and also to show that he has duly qualified as executor thereof, and entered upon the duties of his office.

8th. He avers, and he understands the defendants concede, that at the time of said Hughes' death there still remained a large number of unsettled partnership cases belonging to the said firm, in different stages of progress, and which were in the hands of said firm on said March 18th, 1869; and of those nearly finished, and involving very heavy sums of money, some, before the testator's death, had been reduced to judgment, and among them—

1. Gazaway B. Lamar, judgment $379,343.51, fee 10 per cent., $37,934.35; claim for Judge Hughes 33⅓ per cent. of the fee, $19,311.45. (Already collected.)

2. W'm Battersby & Metcalf's, adm'r or ex'r, judgment $485,242.07, fee 5 per cent., $24,262.16; ⅓ of fee, $8,087.36. (Already collected.)

3. Martin, about $44,000; fee, 30 per cent., $13,200.00. Hughes' share, $4,400.00. (Already collected.) This is a case in which the money has been collectod from "Lamar" judg't.

4. Alfred L. Tyler, judgment $88,872.21; fee $4,443.61; one-third of Hughes' share, $1,481.20. (Already collected.)

5. John L. Hardee, executor, &c., judgment, $103,856; fee about $25,000.00. Hughes' share, about $8,000. (Already collected.)

5 That the whole amounts of said judgments, including the portion

of fees belonging to said firm, and embraced in said agreements, have been collected by said defendants.

9th. The plaintiff further avers, charges, and offers to show and to prove the defendants have under their control, and maturing for hearing, other large claims embraced within said agreements, many of which, if not all, will be realized, the amounts of which the plaintiff is not able to state with precision, nor is he able to state their exact stage and condition, or in some of them whether if collected the testator's estate will be entitled to receive one-third or one-fourth of the fees derived therefrom.

10th. Plaintiff further shows that shortly after receiving his letters testamentary, as aforesaid, finding that the estate of his testator was loaded with debts, which he well knew there were no assets in his hands as executor adequate to pay, plaintiff well knowing there was a considerable sum due by his said testator to and on account of said copartnership of said Hughes, Denver & Peck, and also well knowing that the said Hughes, after the settlement of said accounts, would have a considerable sum coming to him from said copartnership, on the 15th day of November, 1873, addressed to the defendants a letter to obtain a settlement of said accounts, a true copy of which is herewith filed, and made part hereof, marked Plaintiff's Exhibit A. R., No. 3, and another letter dated December 2, 1873, and another December 18, 1873, and another January 3, 1874, true copies of which said letters, respectively, are herewith filed marked Plaintiff's Exhibit A. R., Nos. 4, 5, and 6, and made part hereof, all of which led to the adjustment of said copartnership of Hughes, Denver & Peck up to January 1, 1874; and plaintiff avers that on said adjustment it was ascertained after the payment of the firm debts and the adjustment of the separate accounts of the individual partners with the firm, and the retention by said defendants of a certain amount
6 of money for future expenses in the prosecution of said partnership business, there was left the sum of about nine thousand dollars, one-third part of which was paid to him as executor aforesaid; and so plaintiff says "all the partnership obligations" have been fully "satisfied," and there is nothing left but a division of the fees which have been or may be received since the said 1st day of January, 1864.

11th. The plaintiff further shows that having ascertained that the said defendants had collected the judgments as hereinbefore stated, he applied to the said defendants to pay to him the just proportion thereof coming to said testator's estate; that the defendants admitted having received the same, but as to the said judgment in favor of said G. B. Lamar, they set up and pretended that the said James Hughes, in his lifetime, had abandoned the said case; had, on motion, had his name stricken from the case in the Court of Claims on the 9th of January, 1873, and had never after had any connection with the same, but that they, the defendants, had thereafter conducted the same to final judgment and recovery; and they denied that the said testator had any interest, and refused to pay your orator any portion of the fees arising therefrom. To the contrary of all which plaintiff says, mainly on his own knowledge of the facts, that the great labor in the preparation of the case, in procuring the evidence and the settlement of the questions of law involved in it, was expended before said Hughes had his name stricken out, as aforesaid, but he had a quarrel with said Lamar, and refused to have anything to do with him or any further responsibility in the argument of the case; and thereupon, the defendant, Peck, prepared a motion to have the name of said Hughes stricken from the case, a true copy of which (with the erasures and additions thereto) is herewith filed, and marked Plaintiff's

Exhibit, A. R., No. 7, as part hereof; that the original down to the words "said cause" was in the handwriting of said Peck, and the era-
7 sures were made by said Hughes, and the addition was made at the same time by said Hughes following the words "said cause."

And plaintiff further states and avers that, after the said judgment in favor of the said Lamar was rendered, the said Hughes caused and instructed plaintiff on the 2d day of June, 1873, to make in the diary of James Hughes & Co. the following entry in relation to that case: ("In this case Denver and Peck are counsel of record, Judge Hughes having withdrawn his appearance, but without relinquishing his right to his portion of fee to be paid by Lamar.") And in point of fact plaintiff says and shows that after said January 9th, 1873, very little further labor was done in said cause, as will appear by a true copy of the docket entries made therein in the Court of Claims, which is herewith filed, made part hereof, and marked Plaintiff's Exhibit, A. R., No. 8. And so your orator says he is entitled, as representative to said Hughes, to his proportion of said fee. And as to the other four causes aforesaid, wherein the defendants have received the fees aforesaid, plaintiff understands from the said defendant, Peck, that he admits the claim of plaintiff under the said agreement of 13th of August, 1869, but he cannot act therein and pay over the same without the concurrence of his co-defendant, Denver. And said Denver denies to plaintiff that there is anything due to him on account of any of said claims under the original partnership or under the said agreement, and pretends that said agreement, as originally proposed to him, was modified by his endorsement thereon, and said Hughes never accepted said modification. To the contrary whereof, plaintiff says that it was accepted by said Hughes and acted upon by said parties thereto; and besides, if it was not accepted, the said parties are bound by their said article of March 18, 1869.

12th. Plaintiff further shows, that having failed to obtain any adjustment and settlement with defendants by parol, and being desirous
8 to collect all the assets of the said estate of said James Hughes, he, on the 15th day of April, 1874, and again on the 25th day of April, 1874, sent letters to the said defendants, true copies of which he files herewith as part hereof, marked Plaintiff's Exhibit, A. R., Nos. 9 and 10, but he has received no response to them, or either of them.

13. He further shows, that while the defendant, Peck, admits, and the defendant, Denver, denies that plaintiff is entitled to one-third of the fees so received by said defendants (except as to the said case of the said Lamar, which they both controvert), or which may hereafter be received by them, he, plaintiff, claims that he is entitled to one-third part of each, and he seeks to have the judgment of this court thereon, to enable him to obtain the amount to which he is justly entitled in the fees already received as aforesaid by the defendants, and to adjust the portions to which he will be entitled of said fees as may hereafter be received by them in cases which have not already been reduced to judgment or in which judgment is not about to be given.

14. He further shows, he is advised that the moneys so received by defendants are admitted by them to be earnings of the said copartnership, and that he is entitled by the usage and powers of this court to have all of said fees, his interest being one-third thereof, paid into the chancery of this court, to abide the issue of this cause; and he also shows that he can have no adequate relief in the premises save in this honorable court.

*Prayer.*

In consideration of the premises, and to the end that the said defendants may answer the several matters and things hereinbefore charged as fully and particularly as if they were again here stated and they severally interrogated thereto under their corporal oaths; and that the said defendants, by order of this court, may be required to bring
9 into this court the whole amount of the fees derived from each of the aforesaid causes to abide the order or decree of this court; and also all such other fees as they or either of them shall or may from time to time derive from any of the causes contemplated in said agreements, or either of them, there to abide such order, judgment, or decree as may be passed in the premises; and also that they may be required to discover immediately under oath what claims or other business belonging to the said firm was unfinished at time of the testator's death, and its and their exact condition then and at the present time; and that an account of the unfinished business of said partnership may be taken by the auditor of this court, and that an order be passed referring the cause for said purpose; and for such further and other relief in the premises as to your honors may seem meet and proper, &c.

ARCHIBALD ROANE,
*Executor of James Hughes, deceased.*

I have read over the foregoing and annexed bill of complaint and know the contents thereof. The facts therein stated as of my own knowledge are true, and those stated on information derived from others I believe to be true.

ARCHIBALD ROANE,
*Executor of James Hughes, deceased.*

Subscribed and sworn to before me, April 29, 1874.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't.*

10 EXHIBIT A. R., No. 1.

(Copy.)

It is agreed by and between the undersigned, members of the law firm of Hughes, Denver & Peck, as follows:

1st. From and after this date, business will not be received in partnership, but each member of the firm shall be at liberty to receive and transact business on his own account, taking to himself the emoluments thereof, without an accountability to the others, or either of them.

2d. All new business coming to the firm of Hughes, Denver & Peck, through the mails, shall be equitably divided as the undersigned shall agree.

3d. The business of the firm heretofore received and now in hand, shall be closed up as rapidly as possible by the members of the firm as partners under their original terms of association and in the firm name.

4th. No new business, nor entries relating thereto, shall be made on the firm books, but only such entries as shall be necessary and proper to the closing up of the business and cases already in charge of the firm.

(Signed) JAMES HUGHES.
J. W. DENVER.
C. F. PECK.

Signed in triplicate, and dated March 18, 1869.

11 EXHIBIT A. R., No. 2.

WASHINGTON, *Aug.* 13, 1869.

Gen. J. W. DENVER,
*Wilmington, Ohio:*

DEAR GENERAL: Arthur goes this evening; M'r Peck leaves on Monday; I am waiting on the Perry case. Before taking this journey I am making my will, and otherwise providing for accidents. M'r Peck and I agree that in case of the death of any one of us, his heirs or personal representatives, or their duly authorized agent, shall receive one-third of the fees in cases nearly finished, and twenty-five per cent. in other partnership cases. Do you agree to this? Answer here.

Yours truly,

(Signed) JAMES HUGHES.

If you approve this sign it on the other side and return it.

This proposition has been submitted to me and I agree to it.

(Signed) CHA'S F. PECK.

I agree to this, but with the express understanding that all the partnership obligations shall be first satisfied before any such division can be made at any time.

(Signed) J. W. DENVER.

WILMINGTON, OHIO, *Aug. 18th*, 1869.

EXHIBIT A. R., No. 3.

WASHINGTON, D. C., *Nov.* 15, 1873.

Mess'rs DENVER & PECK, *Washington, D. C.:*

GENTLEMEN: As executor of Judge Hughes, I have the honor to inform you that I am ready at any time that may be agreed upon, to
12 make a settlement and adjustment upon a fair basis, of the accounts of Judge Hughes with the firm, and to settle all other matters pertaining to the business of said firm. I know of no reason why this adjustment should not be made in the most amicable spirit, since you have both frequently expressed a desire to have a fair settlement, and certainly no obstacle or captious objections to such a settlement will be interposed by me.

As to the division, when collected, of fees now due, or to become due hereafter, I enclose a copy of an agreement between the parties, made in August, 1869, the original of which is in my possession.

Please let me hear from you at an early day.

Very respectfully,

A. ROANE.

EXHIBIT A. R., No. 4.

WASHINGTON, D. C., *Dec'r* 2, 1873.

Messrs. DENVER & PECK,
*Washington, D. C.:*

GENTLEMEN: On the 15th ult. I addressed you a letter expressing my readiness to adjust the outstanding differences between Judge Hughes and the firm of Hughes, Denver & Peck, and at the same time enclosed a copy of the agreement between the partners for the division of fees, made August, 1869, subsequent to the dissolution of the firm.

To that letter I have not yet received a reply. I reiterate my proposition, and state that I desire to have at once an adjustment of all the

matters of difference between the firm and Judge Hughes, and I am prepared to make this adjustment on fair, just, and liberal terms. You have both expressed not only readiness but anxiety to have a full settlement, and I therefore hope that there will not be any delay on your part in appointing a time and place for this settlement. I am ready to meet either yourselves or any person or persons you may appoint to represent you.

Very respectfully,

A. ROANE,
*Executor, &c.*

13 EXHIBIT A. R., No. 5.

WASHINGTON, D. C., *Dec. 18th*, 1873.

C. F. PECK, Esq.:

DEAR SIR: As executor of Judge Hughes, I will give my assent to the compromise proposed by you in the suit of Chadwick for the use of Hunton against the firm of Hughes, Denver & Peck, but with the understanding that after settling this and the other outstanding ascertained debts of the firm and of Judge Hughes' individual indebtedness to it, that the balance of Judge Hughes' share of the recent collection shall be turned over to me without further delay, and that future collections of the firm shall be divided at once after deducting expenses and debts hereafter ascertained.

Yours, truly,

A. ROANE.

Please submit this to the general.

A. R.

EXHIBIT A. R., No. 6.

WASHINGTON, *Jan. 3*, 1874.

Messrs. DENVER & PECK:

GENTLEMEN: During your absence and under your authority, Mr. Arthur Denver and myself have gone over the books of Hughes, Denver & Peck and have agreed upon a settlement of accounts and also upon an adjustment of all pending outstanding matters, so far as known to either of us. This adjustment includes the accounts of Mr. Arthur Denver and of myself with the firm.

I have agreed, for the sake of an adjustment, that the $50 on account of Ben Williams' wages credited on the books to Judge Hughes
14 should be charged to him, but I am not convinced that the entry, as it stands, is erroneous, but on the contrary I firmly believe that it is correct.

I have admitted the credit claimed by Arthur in the James F. Quin case, but at the same time I think it but fair and just that he should pay his share of the judgment in the Chadwick suit, and also his share of the unpaid draft of the firm for expenses in the Dauphin case held by W. From the fact that little or nothing was realized by the firm in this case, I think that a compromise ought to be made, if possible, with the holder of the draft.

It was understood and agreed that there would be no further delay in turning over to me the balance of the recent collections, which I hope will now be done, reserving, if it be necessary, an amount from the gross fees sufficient to cover the whole of the Williams judgment, of the draft in the Dauphin case, and the fee of Durant & Hornor, and if a compromise

is hereafter made I can be credited with Judge Hughes' share of what may be gained by such compromise.

I am the more urgent for immediate payment because I am much pressed for the payment of preferred bills, such as funeral expenses, medical services, servants' wages. The judgment in favor of the Metropolitan Bank is, I understand, one of the preferred debts. If this be so, I will pay it at once. Under any circumstances it will receive my earliest attention.

Very respectfully,

A. ROANE,
*Executor, &c.*

EXHIBIT A. R., No. 7.

GAZAWAY B. LAMAR
*vs.*
THE UNITED STATES. } No. 3222. U. S. Court of Claims.

Now comes James Hughes, one of the attorneys of record in
15 this case, and moves that his name be erased as such attorney and that he have leave to withdraw his appearance, and sever his connection with said cause, reserving to the firm of Hughes, Denver & Peck, and every member thereof, all rights as to full compensation for services rendered up to the present time.

JAN. 9, 1873.—Judge Hughes filed motion to withdraw his appearance from Lamar case, which was allowed.

JUNE 2, 1873.—Judgment in favor of Lamar for $579,343.51. See diary, p. 97, in which it is stated by direction of Judge H. as follows: "In this case Denver and Peck are counsel of record, Judge H. having withdrawn his appearance, but without relinquishing his right to his portion of fee to be paid by Lamar."

AUG. 30, 1873.—Case app'd to Supreme Court.

APRIL 6, 1874.—Appeal dismissed.

GAZAWAY B. LAMAR
*vs.*
THE UNITED STATES. } No. 3222. U. S. Court of Claims.

Now comes James Hughes, one of the attorneys of record in this case, and asks leave to withdraw his appearance herein.

EXHIBIT A. R., No. 8.

*Copies of entries on Court of Claims docket, in case of G. B. Lamar vs. The United States, No. 3222.*

1873.
Jan. 9. M'r Hughes filed a motion asking leave to withdraw his appearance as attorney. Allowed.
March 8. Call on Treasury Dep't. Allowed and issued.
" 21. Claimant's brief filed.
April 22. Additional brief for claimant filed.
16 May 2. Reply of Treasury Department filed.
" 3. Messrs. Bartley & Janin and E. P. Norton filed motion for leave to file intervening petition.
" 19. Motion of May 3d argued and submitted and overruled.

" 20. Argued and submitted. Amended petition filed. Both parties filed findings.
June 2. Ch. Justice Drake announced the decision of the court. Judgment for claimant for $579,343.87. Court filed findings.
" 9. Attested transcript of judgment issued to attorneys of record.
Aug 30. Application for allowance of appeal filed by Attorney-General and allowed by Chief Justice Drake, at chambers, and attorneys notified.
Oct. 24. Record on appeal delivered to defendants.
Nov. 24. Leave granted to withdraw two receipt-books, A and B, filed Dec. 23, 1872.

1874.

April 7. Mandate of Supreme Court dismissing appeal filed by J. W. Denver, attorney of record.
Certificate of mandate given to attorney of record.

EXHIBIT A. R., No. 9.

WASHINGTON, D. C., *April 15th*, 1874.

Gen. J. W. DENVER, *Washington, D. C.:*

DEAR SIR: M'r Joseph H. Bradley, j'r, my attorney, has reported to me his conversation with you concerning a settlement of fees which I claim to be due to me, or hereafter to become due, as executor of Judge Hughes. As there appears to be a difference of opinion as to the legal rights of the partners in the late firm of Hughes, Denver & Peck, I write to propose an amicable suit to settle these rights, embracing
17 all matters of controversy, upon terms hereafter to be agreed upon. If you desire it, I will propose the terms. Please let me hear from you at once. I have sent a copy of this letter to M'r Peck.

Very respectfully,

A. ROANE, *Executor, &c.*

C. F. PECK, Esq.:

DEAR SIR: The above is a copy of a letter I have sent to Gen. Denver. I send it for your information and for such action as you may deem it your duty to take as one of the members of the late firm of Hughes, Denver & Peck.

Very respectfully,

A. ROANE, *Executor, &c.*

EXHIBIT A. R., No. 10.

WASHINGTON, D. C., *April 25*, 1874.

Messrs. DENVER & PECK, *Washington, D. C.:*

GENTLEMEN: In view of the arrangements made with you by M'r Bradley, my attorney, with regard to the suit about to be commenced, before filing the bill it suggests itself to me as proper to renew the demand heretofore made for a division of fees, which I now do, in the cases of Lamar, Battersby & Metcalf's administrator or executor, Martin, A. L. Tyler, Hardee, and such others, if there be any, in which the fees have been collected or are about to be collected, and no division made, and such others belonging to the late firm as may hereafter be collected.

If you think proper to make the division of fees in the cases other than the Lamar case, the bill will be prepared so as to embrace only the

latter, but in this event it will be necessary to have you answer before 10 o'clock a. m. on Monday.

Very respectfully,

A. ROANE, *Executor*, &c.

18 *Summons to answer.—Issued April* 29, 1874.

In the supreme court of the District of Columbia, April 29th, 1874.

ARCHIBALD ROANE, EX'R, COMPLAINANT, *against* JAMES W. DENVER ET AL., DEFENDANTS. } No. 3706. Equity docket 13.

The President of the United States to James W. Denver and Charles F. Peck, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER,
*Chief Justice.*

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
*Ass't Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken as confessed.

*Marshal's return.*

Summoned both April 30th, 1874.

A. SHARP,
*Marshal.*

19 *Answer of J. W. Denver.—Filed June* 7, 1874.

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR, &C., OF JAMES Hughes, deceased, plaintiff, *vs.* CHARLES F. PECK & JAMES W. DENVER, DEfendants. } No. 3706. Eq. doc. 13.

The separate answer of James W. Denver to the bill of complaint of Archibald Roane, executor of the last will and testament of James Hughes, deceased, against him and Charles F. Peck, in the supreme court of the District of Columbia, in chancery exhibited.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception the manifold errors, uncertainties, and insufficiencies in the said bill

of complaint contained, for answer thereunto does make answer as follows:

1st. To the allegation in the 1st paragraph of said bill contained, he answers and says, that the said Roane, Peck, and himself are citizens of the United States, as the said James Hughes was, and residents of the District of Columbia.

2d. To the allegations in the 2d paragraph of said bill contained, he answers and says, that the partnership in the practice of law and
20 the prosecution of claims between the said Hughes, Peck, and himself, and the establishment thereby of the firm of Hughes, Denver & Peck commenced in June, 1865; that it is true that the said James Hughes was possessed of a respectable but not extraordinary political and legal reputation, and had before then occupied and resigned the position of judge of the Court of Claims of the United States, and had resumed practice as a lawyer.

That such a partnership was first proposed to this respondent in March, 1865, at Baltimore, by Andrew J. Isaacs, in the presence of the said Hughes, with the said Isaacs and Hughes; and it was agreed between them that it should be established; but the said Isaacs dying, the partnership formed consisted only of the said Hughes and this respondent, until in June, 1865, they associated with themselves the defendant, Charles F. Peck, quite the equal of the said Hughes in ability and knowledge of the law; that there were no written articles of partnership, but the firm was established for the practice of the law and the prosecution of claims against the United States in the Court of Claims, in the Supreme Court on appeals, before Congress, and in the departments at Washington, each partner having an equal interest in the earnings and profits, and being equally liable for all expenses and charges; that the firm did obtain a lucrative practice, particularly in the Court of Claims; that there was no definite and formal agreement as to the particular part that each should take in the conduct of the business, but the attention to the same in the courts fell naturally to the share of the said Hughes and Peck, and that before Congress and the departments to this respondent, who had had experience therein while a member of Congress. This respondent denies that the said Jas. Hughes had either a leading or directing interest or control in the firm, and says that he had therein only the equal interest and control which each of his partners had, he not being more widely known than this respondent, nor known at all in by far the larger part of the United States, nor
21 attracting to the firm more business than this respondent, nor having made any extraordinary reputation either at the bar or on the bench of the Court of Claims. It is true that the business of the firm soon grew to large proportions, and it became necessary to employ clerks, and the firm reaped large profits; all which was much more owing to the labors of this respondent and the said Peck than to those of the said Huges, hwho was neither of industrious nor regular habits, and who after a time greatly neglected the business of the firm, especially in the Court of Claims, and left the cases there to the attention of the said Charles F. Peck; and that, in short, the said Hughes was in no wise a more important or valuable member of the firm than either the said Peck or this respondent, at the beginning; and greatly lacking industry, his usefulness in the firm continually decreased, until at length he ceased to be of any use at all, as will be more fully set forth hereinafter.

3d. To the allegations in the third paragraph of the bill of complaint contained this respondent answers and says that to defray the expenses of the office, and to collect testimony and prepare their causes, each

partner contributed out of the part of the earnings and profits received by him, from time to time, as there was occasion; but neither the said Hughes nor Peck contributed anything thereto out of his private income, nor had either of them any private income out whereof to contribute thereto; but this respondent did, in 1866, contribute thereto, of the proceeds of sale of his private property, somewhere between two and three thousand dollars.

4th. To the allegations in the fourth paragraph in the said bill of complaint contained, this respondent answers and says, that Exhibit A. R., No. 1 of the bill, is a true copy of an agreement of dissolution of the said partnership, continuing it, if at all, thereafter for only the
22 disposition, settlement, and closing up of its affairs, and such business as the firm then had, which was entered into between and by the partners and signed by each on the eighteenth day of March, 1869, by the third stipulation whereof each partner was bound, as he had been before, faithfully to give his personal attention to settling up and bringing to a close the business of the firm as rapidly as possible; all the duties and obligations of each as a partner under their original terms of association continuing to exist in full force as to all the unfinished business then in hand, and as to that only the partnership continuing.

5th. To the allegations in the fifth paragraph (or 5th & 6th) of the said bill contained this respondent answers and says that by the terms of the said 3d stipulation the business of the firm theretofore received and then in hand was to be, by its very words, "closed up as rapidly as possible by the members of the firm as partners under their original terms of association, and in the firm-name;" that as to all such unfinished business, their joint and equal interest and their joint and equal duty continued and was co-relative, and the right of each to an equal interest in the earnings depended upon the faithful performance of that duty and of an equal share of labor and attention; that said agreement was duly made and was valid and binding on all the parties, and its construction and effect are questions of law; that Exhibit A. R., No. 2 is a true copy of a letter written by said James Hughes, on the 13th of August, 1869, at Washington, to this respondent, and of the endorsements of the defendant Charles F. Peck and of this respondent thereon; and that the said letter and endorsements constituted a supplementary agreement between the said three parties, and became a part of the agreement of March 18th, of the same year; that by the phrase "all the partnership obligations shall be first satisfied," in his endorsement contained, this re-
spondent meant, not only that all debts and liabilities of the firm
23 should be satisfied, but that all partnership duties and obligations resting on each partner should be performed and satisfied; that by the said proposition the said Hughes admitted that if death should prevent his performance of those duties and obligations, and deprive the firm of the benefit of his professional attainments, ability, and reputation, labor, attention to the business, and service generally, he would not have earned nor become entitled to an equal share of the earnings, except in cases nearly finished; and this was an admission that he could not be entitled to an equal interest if he should wilfully, or by negligence or indolence, deprive the firm of those benefits or withhold them from it. And it is true that the "qualification over the signature" of this respondent was no more than a statement of a legal proposition, and that the said Hughes did at once accept it, and that the agreement, thus qualified, became the basis of the future operations of the three parties, and of the rates of their divisible interests

respectively; that agreement being, in fact and effect, that each partner should continue to attend, faithfully, diligently, and efficiently to the business of the dissolved firm until it should be closed; and that if, and only if, he should so attend to it, and should die before it should be closed, then he should be deemed to have earned, and to be entitled to thereby, one-third or one-fourth, as the case might be, of the fee in each case.

And this respondent meant to have the condition stated in his endorsement, distinctly agreed to by the said Hughes, specially to oblige him to attend to the business of the said firm, which he was inexcusably neglecting, having already, in the latter part of the year 1868, ceased to occupy any part of the building rented by the firm, and having rented an office and removed to it, on Pennsylvania avenue, and from that time forward having paid little attention to the business of the firm, in consequence of which the said Charles F. Peck, weary, as this respondent was, of his neglect of the
24 business, asked of the said Hughes a dissolution of the partnership, and after some demur the said Hughes consented to it, and drew up the said agreement of March 18, 1869, and it was signed by him and this respondent and the said Peck, and took effect at its date. And if the said Hughes had thereafter done his duty as a partner, and given proper attention to the business remaining to be done, this respondent and the said Peck could not have been heard to complain of his former neglect, which now, indeed, is herein spoken of only by way of inducement. But he did not do so, but neglected the business more and more; wherefore this respondent, in August, 1869, made it a condition of his right to a third or fourth of the fees that might be realized, that he should change his course, and help earn the moneys that he intended to demand and expected to receive; but from that time forward he earned little or nothing in the service of or as a member of the firm, until he died, to entitle him to any such compensation.

7th. To the allegations in the seventh paragraph (or 7th and 8th) of the said bill contained this respondent answers and says that he admits that the plaintiff was the clerk of the firm and kept its books, as he has alleged; that the said Hughes died testate; and the plaintiff is the executor of his will, and was qualified as such as he has alleged. It is also true that at the time of his death there still remained unsettled a large number of partnership cases, belonging to the said firm, in different stages of progress, and that were in the hands of the firm on the 18th of March, 1869. And he herewith exhibits a statement of all claims and cases now in the hands of this respondent and the said Peck, that were reserved for collection by the said firm, which is marked "J. W. D., No. 1," and prayed to be taken as part of this answer; in addition to which are certain interests in claims for the refunding of taxes paid on cotton, and the claim of the heirs of Ludovicus Belding to the Hot Springs of Arkansas, to which the
25 said Hughes attended after the dissolution. Those marked W are truthless, and those marked D doubtful; and those decided adverse by the court of claims are appealed to the Supreme Court of the United States. In the first case named, that of Charles H. Adams, there is no fee. The claimant expected to recover in that case some twenty-three thousand dollars. The Court of Claims gave him judgment for $2,080 only; whereupon an appeal to the Supreme Court of the United States was prayed, and the said Hughes took the case into his special and sole charge. The appeal was allowed, but he wholly failed and neglected to prosecute it, never filing the record in the Supreme

Court, although the judgment was tendered on the 8th of May, 1872; on account of which neglect this respondent and the said Peck have been compelled to relinquish all claim to any fee in the case, and have a just claim against the estate of said Hughes for two-thirds of the fee that would have been realized but for his gross neglect and inattention, of which this was by no means a solitary instance. He went often into court unprepared, not having acquainted himself with the record, both in the Court of Claims and in the Supreme Court; was thus, sometimes, of actual detriment in cases; sometimes absented himself when a case was to be heard, because he was not prepared; sometimes knew no more of a record than what he could gather by a partial reading in a street-car, on his way from his office to the Capitol, when it was to be heard. In the case of W. W. Burns vs. The United States, in the Supreme Court, employed Matt. H. Carpenter to argue it, and made the client pay said Carpenter therefor, about the 1st of December, 1871, three thousand dollars, and employed other persons at various times in the same way, causing them to be paid for like services with money of the firm.

The last case mentioned in said Exhibit J. W. D., No. 1, is a suit for $10,000 in Kansas Pacific Railroad bonds, instituted for the use of the firm, for services rendered by it to Joseph B. Stewart, and the
26 claim is probably worthless. The firm also had for collection, before the dissolution, a claim of Perry Fuller and Alexander McDonald, for some $60,000 for supplies furnished to Indians; after prosecuting which for a time, Chipman, Hosmer & Co. were employed, by some arrangement between the claimants and the said Hughes, and for reasons unknown to this respondent, to prosecute the claim jointly with him, and it was collected, but no part of the fee was paid to the firm; and the said Hughes having, in 1866, borrowed two thousand dollars of the said Fuller, and given his note therefor, which is now held by his widow, he refused to pay the same when payment was demanded, sometimes, as this respondent is informed, alleging that the said Fuller owed him, and sometimes that he owed the firm a larger sum than the amount of the note; whereby, and as the said Fuller could not have owed him, individually, for legal services, he has compensated his said note with a debt due the firm, and been thereby released, the holder of the note abandoning all claim against him. In further answer to the allegations of the said paragraph, this respondent states that, according to the books of the firm, as kept by the said plaintiff, the several partners of said firm stood charged up to and on the first day of January, 1874, for moneys received by each for fees and commissions on collections, after deduction of all moneys paid by each, towards expenses of the firm and otherwise, as follows:

| | |
|---|---|
| The said James Hughes | $99,419 60 |
| This respondent | 93,294 98 |
| The said Charles F. Peck | 93,505 93 |

And as appears by the books subsequently kept, and as has been ascertained and determined upon adjustment of accounts by the said Roane and themselves, the said partners were charged up to and on the 1st of February, 1874, for moneys received, less expenses and outlay, as follows:

| | |
|---|---|
| The said James F. Hughes | $109,641 71 |
| This respondent | 111,622 84 |
| The said Charles F. Peck | 114,206 16 |

27 And the one-third of all net fees collected being $111,823.58, the balance in favor of said Hughes was $2,195.05. Since when, this respondent and the said Peck are charged, each, with net fees received, over and above expenses and payments for the firm, $30,295.69. All which, by the accounts herewith exhibited, marked respectively J. W. D., No. 2, J. W. D., No. 3, and J. W. D., No. 4, and prayed to be taken as parts of this answer, will more fully appear. No general cash account or expense account was kept of the said Roane in the books of the firm, and it is not necessary to state either, up to January, 1874. But this defendant exhibits herewith a complete account of cash received and paid by the firm, and of expenses and outlay, since January 17, 1874, which are marked respectively J. W. D., No. 5, and J. W. D., No. 6, and are prayed to be taken as parts of this answer. And this respondent, further answering, says that such judgments were obtained as are in the said paragraph mentioned, by himself and the said Peck, with no assistance from the said Hughes, long after the dissolution of said part'ships, as follows, that is to say:

1st. In favor of Gazaway B. Lamar, June 2, 1873, for $679,343.57.

2d (in which is included the claim of Martin for $44,884.48). In the fee wherein the said Hughes had no interest, nor has his executor, the plaintiff, any; the fee being ten per cent., and on the part Martin twenty additional.

3d. Of W'm Battersby and Metcalf's executor, May 20, 1873, for $487,242.07, the fee whereon was five per cent.

4th. Of Alfred L. Tyler, May 19, 1873, for $88,892.31, the fee whereon was five per cent.

5th. Of John L. Hardee, March 31, 1873, for $103,856.86, on $15,000 whereof was no fee, and the fee paid was $22,214.21.

28 9th. To the allegations in the ninth paragraph of said bill contained, this respondent answers and says that the said Exhibit J. W. D., No. 1, sets forth and shows all the claims under the control of this respondent and the said Peck maturing for hearing and embraced within the said agreements, or that were in the hands of said firm for collection, and that have not been finally rejected; and whether the said executor will be entitled to receive either one-third or one-fourth or what part of the fees, this respondent will submit to the court upon the considerations hereinafter to be stated; and he and the said Charles F. Peck are desirous to deal fairly and honestly by the said executor, and to pay him whatever under the circumstances may equitably and justly be the part and portion of the said James Hughes in the fee in each of said cases, and to retain only what in each may in honor and conscience be their own.

10th. To the allegations in the tenth paragraph of said bill contained, this respondent answers and says, that the Exhibits A. R. 3, A. R. 4, A. R. 5, and A. R. 6 are true copies of letters addressed by the said plaintiff to him and the said Peck (except No. 5, addressed to the said Charles F. Peck alone), of the several dates which the said copies bear, and that they led to an adjustment of the books, as shown by the accounts herewith exhibited, taken therefrom, up to the 1st day January, 1874; and that in consequence of the needs of the estate of the said Hughes, as represented by the plaintiff, this respondent and the said Peck gave him the sum of three thousand dollars on account, without admitting thereby his right as executor to any specific part of the fees in any cases not finished when the said firm was dissolved on the 18th of March, 1869, nor waiving their right to contend that the agreement of August, 1869, was dependent on a condition on the part of the said Hughes, that he

had not kept or performed, and that if it ever took effect as to him, it was abrogated when he acceded to this respondent's demand that the
29 business relations between them should cease. And alleges that all the partnership obligations have not, nor have any of them, been satisfied by the said Hughes, because from the time of said dissolution he greatly disregarded his obligations as a partner as to the chief business and almost all the business of the firm, and all his obligations as to the cases claims, and business on which anything has been or is likely to be realized; no law having yet provided for refunding the cotton tax, and the success of the Belding claim, which he greatly neglected, being exceedingly doubtful; and his services in regard to both having been worthless.

11th. To the allegations contained in the eleventh paragraph of the said bill, this respondent answers and says:

That it is true that he and the said Peck did and do deny that the said James Hughes had any interest in the fee upon said moneys so received by them for the said Gazaway B. Lamar, or upon the part thereof which belonged to the said Martin; and that they have refused, and do still refuse, to pay to said executor any part of said fee; and it is true that they have asserted, and do continue to assert, that the said James Hughes had, in his lifetime, abandoned the said case; had, on the 9th of January, 1873, filed in the Court of Claims a motion, and procured its allowance, asking leave to withdraw his appearance as an attorney in the case, had thereby, as to that case, severed himself from and retired from the firm, because he could not otherwise withdraw from the case if the firm, including him, still continued to attend to it, and had never afterwards rendered any service therein, or had any connection with it, or during his lifetime claimed any interest in the fee. The Exhibit A. R., No. 8, of the bill contains a true abstract of the steps taken in said cause on the said 9th of January, 1873, and afterwards; and this respondent believes that the statements in the said paragraph contained,
30 in regard to the making of the first paper copied in A. R., No. 7, and in regard to the erasures therein and the additions thereto, and by whom it was written, erased, and added to, are true; that the first draft of it was written by the said Peck, at the request and from the dictation of the said Hughes, and that the same with the erasures and additions is truly copied in the said exhibit. But the said Hughes made no use of that motion, but, on the contrary, filed the motion as it follows that, in the same exhibit, and as the same is herewith exhibited, marked "Exhibit J. W. D., No. 7," and prayed to be taken as part of this answer. And this respondent also exhibits herewith an authenticated copy of the same, and exemplification of the record of its allowance, which is marked "Exhibit J. W. D., No. 8," and prayed to be taken as part of this answer. This respondent knew nothing of the entry in his diary, which the plaintiff alleges that the said Hughes caused him to make, and now knows nothing about it, except that the plaintiff states that it was so made, which this respondent does not deny, because, if made, he knew nothing of it, and it was a mere private memorandum made by the said Hughes by the hand of the plaintiff, that only shows what his own secret intentions were; and this respondent would prefer to believe that the said Hughes did not mean and intend to claim an equal share or any share of the fee in a case which he had denounced publicly as fraudulent, and refused to prosecute, though in truth and in fact it was not fraudulent, but a just and proper claim.

And further answering, he states that the said Hughes had pretended to take special charge of the said case of Lamar (in which certain cot-

ton was also claimed for that belonged to the said Martin, and had been stored with Lamar and seized with his own cotton, for which cotton of Martin a separate suit was also pending in the name of Taylor, administrator of Thompson, father of Martin's wife, and neither said Taylor nor said Martin could in his own name recover); but the said Hughes neglected Lamar's case, and avoided seeing him; and
31 when they at last met, Lamar remonstrated with him for his neglect, and the consequence was a quarrel between the said Lamar and the said Hughes, and that the latter repaired to the office of the said Peck, and there denounced the claim as fraudulent and Lamar as a scoundrel; hinted that he had taken little interest in the case because he believed it fraudulent; told the said Peck that he withdrew, or would withdraw, from the case; urged him to do so likewise, because it was fraudulent, and proposed that they should make Lamar pay them at once for what they had done in the case, as otherwise they would never get anything. But the said Peck declined to unite with him in withdrawing from the case, and said to him that he was not willing to relinquish a large contingent fee for so small a sum in cash as the said Lamar would be able or willing to pay. In reply to this, as this respondent is informed, and was soon after informed by the said Peck, the said Hughes reiterated his determination to settle his own claim for past services, for himself individually, with the said Lamar, leaving this respondent and the said Peck to pursue such course as they might see fit; and thereupon, then and there, at the request and from the dictation of the said Hughes, the said Peck wrote his motion to withdraw, which, as erased and added to, the plaintiff has exhibited. And when the said Hughes, in the month of January, 1873, took the motion which he substituted for that to the Hon. Ebenezer Peck, one of the judges of the Court of Claims, to have it allowed, he, then and there, in the presence and hearing of the said judge, and to him, denounced the said Lamar, as this respondent is informed and believes—denounced the said Lamar as a scoundrel and his claim as fraudulent; and, in reply to a question of the judge as to what he would do about the fee, replied that he would not touch a dollar of it. Nor did he ever set up a claim to this respondent or the said Peck for any part of it, whatever he may secretly have intended to do. At the time when he threw up his connection with the case, the firm had
32 no contract with Lamar for a specific fee, and it was with some difficulty that this respondent and the said Peck afterwards effected an agreement with him, fixing the fee for their services alone at ten per cent., no part of which was agreed to be paid as a compensation for any services of the said Hughes, for whom they could claim nothing. For the part of the claim belonging to Martin, the fee was finally fixed at 30 per cent., including the ten stipulated with Lamar.

This respondent is reluctant to believe that the said Hughes intended to claim part of the fee, which he could not honorably or decently do after withdrawing from the case, and attempting to defeat it, and to prevent this respondent and the said Peck from realizing anything by means of it, by denouncing it as fraudulent to one of the judges of the court that was to try it. As to the other cases mentioned in said paragraph, and all other cases and claims remaining in the hands of this respondent and the said Peck, unsettled, the said Peck does not admit the claim of the plaintiff to one-third or one-fourth of the fees, but denies it, as this respondent does, and claims that said agreement of August, 1869, was abrogated, even if the said Hughes had not forfeited all right under it, from the beginning.

In May, 1872, the dissatisfaction caused by the neglect of the business by the said Hughes culminated in a quarrel between him and this respondent, commenced by the said Hughes, in regard to the employment of this respondent's brother in the office, and which compelled this respondent, on the 14th of May, 1872, after several letters had passed between them, to inform the said Hughes, by a letter, a copy whereof is exhibited herewith, marked Exhibit J. W. D., No. 9, and prayed to be taken as part of this answer, that the cause of difference between them was the almost total neglect by him, the said Hughes, of the old business of Hughes, Denver & Peck, to which he, as well as the respondent, was bound to give proper attention; and to say to him in conclusion: "After what has occurred, it is time for us to separate. We
33 can, as soon as Mr. Peck gets back, divide our business fairly, or get others to do it for us; but however it may be done, I demand that the business relations between you and myself shall be definitely and finally closed at the earliest moment practicable."

To which on the 10th of June, 1872, the said Hughes replied, by a letter, a copy whereof is herewith exhibited, marked Exhibit J. W. D., No. 10, and prayed to be taken as part of this answer, in which he said that he presumed this respondent carefully considered the full scope and effect of his demand before making it; that he at once acceded to the demand; that no amicable negotiations would suffice to close the business relations definitely and finally then existing between him and this respondent; that he did not intend to conduct in person any business that might lead to a controversy with this respondent, and would, therefore, put the business in the hands of counsel; that this respondent need not wait for the appointment of such counsel to follow up his demand by proper legal proceedings, "to close definitely and finally our business relations at the earliest moment practicable;" and that he would afford every facility in his power to accomplish the purposes of this respondent's demand. And he said, "In the mean time, as our firm is already formally dissolved, I beg leave to remind you that, except by courtesy, consent, or express authority, no single member is authorized to act for the firm." No division of the business was ever made, nor were any legal proceedings instituted to that end; but from that time forward, until the death of said Hughes, there was between him and this respondent no intercourse or communication, but unfriendly relations, engendering bitterness, and ending, at length, shortly before the death of the said Hughes, in his preferring charges of professional misconduct against this respondent to the supreme court of the District of Columbia. In which charges he alleged that he did not enter into the said partnership with the expectation of attending to details; that
34 it was expressly stipulated and expected that a great portion of his time would be spent in the West, and that he might keep open a law office in Indiana, for the purposes of his private and professional business; that while in Washington he gave his attention to the general oversight and direction of the business; had entire charge of the cases in the Supreme Court; sometimes assisted the said Charles F. Peck in the Court of Claims, which branch of the business was, he stated, principally confided to the said Charles F. Peck; that in general, litigated cases in the courts were under his, the said Hughes', immediate supervision, and he attended to a good deal of the department business, and to any other when his attention was especially called to it. Almost the whole of this statement was untrue. If the said Hughes entered into the said partnership with the "expectation" of not attending to details

ever made that expectation known to this respondent, and the said rles F. Peck.

The terms of the partnership were in all respects equal for all, and e firm was entitled to the services of the said Hughes to the same xtent as it was entitled to those of this respondent and the said Peck. The said Hughes was not the great man of the firm, the superior of his partners, had not the general oversight and direction of the business, and though at liberty to be at times absent from Washington, had no more rights in that respect than his partners, and was not in the least at liberty to neglect the business of the firm in order to attend to his private affairs or practice. When the partnership was formed, there could not for a long time be much business in the Supreme Court, and and the cases to which he ever attended there were very few, and some of them very miserably attended to, and, in fact, grossly mismanaged and shamefully neglected. It is true that the said Charles F. Peck attended to the cases in the Court of Claims, and that the said Hughes did not, but this was not because by any agreement those cases were confided to the said Peck, but because after the said Hughes had, after a
35 fashion, attended to two or three cases there, he neglected the rest altogether, and shifted the burden of that part of the business of the firm from his own shoulders to those of the said Peck, and compelled him to attend to the cases or to let them go unattended to. All the cases there were litigated, and none of them, after a little while, were under the immediate or other supervision of the said Hughes, nor did he give attention of much value to the department business, or attend to other business, except in rare instances, when his attention was called to it. And, after the dissolution of the said partnership, in March, 1869, he gave attention to the business in which the firm had been employed, of obtaining, by act of Congress, return of the taxes unconstitutionally collected on cotton, and a little to the claim of the heirs of Ludovicus Belding to the Hot Springs of Arkansas. But to the cases in the Court of Claims, of the fees wherein his executor now demands an equal one-third, and all other cases in that court he gave no attention whatever, but left the whole work in that court, and in all the other business of the firm, except that as to the cotton tax and that respecting the Hot Springs, for this respondent and the said Peck to do as best they could, the consequence being that the work proved too great for the said Charles F. Peck, and, in February, 1872, he broke down under it, and was compelled to retire from work altogether for a time, the courts being then in session, and the business pressing.

Then this respondent proposed to the said Hughes to divide the most pressing business in hand, and that each should give his attention where it was most needed. He promised to do this, but did not, nor would at any time thereafter do it, though never absolutely refusing. And thus the whole business of the old firm was devolved on this respondent, by the neglect and failure of the said Hughes, from the time when Charles F. Peck was stricken down, although the said Hughes was then occupying rooms in the same building with the said
36 firm; while occupying which rooms (from the early part of the year 1871 until June, 1873) he never passed one hour in the office of the firm, and this although he had in September, 1866, received of earnings of the firm nearly eleven thousand dollars more than either of his partners, and in October, 1872, nearly six thousand dollars more, and had for more than seven years largely overdrawn his account, never being less than $6,300 in excess of this respondent. Wherefore this respondent insists that the condition on which it was agreed that if the

said Hughes should die, his estate should be entitled to one-third fees in the cases nearly finished and one-fourth in other cases, this that he should attend as a partner ought to the business of the and help to earn such fees, was wholly unperformed by him from date of the agreement until his death, and his estate is entitled nothing under said agreement of August, 1869, but only to such equitable share for previous service as the court or jury shall determine; that the said Hughes, by his course towards this respondent, wholly released him from any obligation to labor for his emoluments and profits, and to earn money by arduous labor and share it with him, and that when the said Hughes acceded to the demand of this respondent for a cessation of all business relation between them, that wholly abrogated the said agreement and gave this respondent the right to decline to work for his benefit and profit during his lifetime or for those of his estate after his death. And he insists that as the only capital invested in said firm was the talents, knowledge, and labor of the partners, the withdrawal of all these by one of the partners was a relinquishment of the said agreement and of any right to share in the earnings of the others; and, moreover, that enmity and hostile relations, created between the said Hughes and this respondent, were inconsistent with and abrogated the said agreement, its life depending upon the existence and continuance of such relations between them as would permit them to work harmoniously together as partners. And he further in-
37 sists that the conditions on which the said Hughes was to be entitled to one-third or one-fourth, under said agreement, viz, that his partnership obligations should be satisfied, never was kept by him, and the agreement never became effectual for any purpose whatever; and he prays that the part and proportion of the fees in the cases mentioned and in others unsettled may be determined by a jury.

12th. To the allegations contained in the 12th paragraph of the bill, this respondent answers and says, that the exhibits A. R. 9 and A. R. 10, mentioned therein, are true copies of letters addressed to this respondent and the said Charles F. Peck, at their respective dates, and that no reply was made to either of them.

13th. To the allegations contained in the 13th paragraph of the bill, this respondent answers and says that he has already answered what is therein said, and that the plaintiff is not entitled to one-third of the fees therein mentioned, nor to one-fourth, but only to a much smaller portion thereof, and that from the one-third or one-fourth stipulated for in the agreement must be deducted a lien in each case as large as the value of the services of the said Hughes would have been worth therein after the 18th of March, 1869.

14th. To the allegations contained in the 14th paragraph of the bill, this respondent answers and says that neither he nor the said Charles F. Peck admits that the moneys therein mentioned are earnings of the said copartnership, for they are their earnings alone, so far as they have been earned since the said partnership was dissolved, and they insist that if they did the work in those and other cases which the said Hughes should have done, instead of employing some competent third person to do it, and paying him for such work out of the share of the said Hughes, they are themselves entitled to what they would so have become
38 bound to pay, and to what the said Hughes forfeited by his abandonment of the business and virtual surrender of it to them; and as to the unsettled and unfinished business of the firm, while he is willing to pay to the said executor whatever the interest of said Hughes therein may be determined to have been worth at the time of his death,

all the circumstances, he protests against being compelled to work ears for the benefit of the estate of one who, during more than four s preceding his death, threw the whole business, with slight excep- ns, upon the shoulders of himself and the said Charles F. Peck, be- ame the bitter enemy of this respondent long before his death, and pre- ferred against him at last untrue charges that involved infamy and dishonor.

Without that that any other matter or thing in the said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true, to the knowledge and belief of this respondent; and, having fully answered, he prays to be hence dismissed, with his costs.

PIKE & JOHNSON,
*Solicitors for Respondent.*

DISTRICT OF COLUMBIA,
*City of Washington, ss:*

I, James W. Denver, do solemnly swear that I have heard read over the foregoing and annexed answer, and know the contents thereof, and that the facts therein stated as of my own knowledge are true; and those stated on information derived from others I do verily believe to be true, so help me God.

J. W. DENVER.

Sworn and subscribed before me June 2, 1874.

R. J. MEIGS, *Clerk.*

39 EXHIBIT J. W. D., No. 1.

*Cases in which judgments have been given in the Court of Claims, and which are appealed to the Supreme Court.*

| Date of judg't. | | Am't of judg't. |
|---|---|---|
| Mar. 1, 1872. | Charles H. Adams—no fee | $2,080 00 |
| 31, 1873. | Samuel G. Cabell | 20,513 61 |
| June 2, 1873. | The Home Insurance Co., of Savannah, Ga. | 37,529 58 |
| | The Southern Insurance Co., of Savannah, Ga | 27,174 15 |
| | John L. Villalonga | 90,389 89 |

*Judgment given, but 90 days for appeal not expired.*

| | | |
|---|---|---|
| Apr. 13, 1874. | Mary B. Habersham, ex | $42,845 58 |
| May 15, " | Alexander Collie | 950,076 71 |

*Award by the British and American commissioners.*

| | |
|---|---|
| John Haskins | $103,600 00 |

*Cases for proceeds of cotton still pending in the Court of Claims.*

| | No. claims. |
|---|---|
| Cornelius T. Cunningham—W | 8 |
| Cross & Sons—D | 52 |
| Wm. Dean and Co.—D | 305 |
| Wm. F. Dickerson—W | 19 |
| Francis S. Lathrop—W | 186 |
| George Patton—D | 170 |
| Henry Lafone—W | 3,500 |
| John D. Merrielees—W | 23 |
| Thos. H. Gilliss—D | 108 |
| Nelson McStea—W | 50 |
| Wm. B. Lowe—W | 47 |
| Emma J. Jones—W | 100 |
| Irvine & Clay—W | 84 |
| Isabella A. Fluker—W | 360 |
| Wm. F. Smith—W | 15 |
| S. D. Burton—W | 200 |
| John Ryan | 4 |
| Walker & Topp—W | 3,400 |
| Wm. M. Derby et al.—W | 555,555 lbs. cotton. |
| Miles Taylor—W | $12,736.91 for sugar. |

40 *Miscellaneous cases still pending in the Court of Claims.*

| | Am't claimed. |
|---|---|
| Leonidas Haskell—W | $19,500 00 |
| A. Walcott—W—(damages on contract) | 17,000 00 |
| M'r's V. A. Tuttle—W—(cotton destroyed in explosion of magazine at Mobile) | 250,000 00 |
| Herman, Boker & Co.—W | 1,108,000 00 |
| Benj. F. Camp—W | 80,000 00 |

*Cases decided adversely by the Court of Claims, and appealed.*

| | |
|---|---|
| Warren Mitchell—D | $129,193 54 |
| Warren Hall—D | 18,769 50 |
| Leonidas Haskell—W | 40,000 00 |
| Whitesides and Co.—W | 17,356 00 |
| Comstock & McClelland—D | 14,611 76 |
| C. A. Danolds—W | 28,326 75 |
| Bishop & Westcott—D | 8,400 00 |

*Case pending in the supreme court of the District.*

| | |
|---|---|
| James Hughes vs. Jas. B. Stewart—W | $10,000 00 |

*Cases pending before the Southern Claims Commission.*

| | |
|---|---|
| Eliza M. Dawson—D | $55,125 00 |
| Ella M. Guy—W | 23,774 50 |
| Earl D. Barden—D | 7,250 00 |

The case of C. A. Perry & Co. for $57,650 has been rejected by the 2d Comptroller, and referred by him to the Court of Claims, but the court has not jurisdiction of the case without further action by Congress.

EXHIBIT J. W. D., No. 2.

D — JAMES HUGHES. — CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1874. | | | | 1874. | | | |
| Jan. 1. | To balance of old account | | 99,419 60 | Jan. 17. | By cash, Wheelan's bill repaid | | 14 39 |
| 17. | correct erroneous credits | | 50 | | " Mattingly's fee, (Stewart case) | | 100 00 |
| | ½ nett fee and costs | | 4,000 00 | | " dep. in court | | 10 00 |
| | ½ Cartwright fee | | 496 43 | | " subpœna | | 1 00 |
| 1873. | | | | | " p'd B. S. Roberts | | 468 00 |
| June 5. | ½ Cohen " | } | 1,965 18 | | " balance | | 109,641 17 |
| | ½ Cobias " | } | | | | | |
| 19. | ½ Headman " | | | | | | |
| | ½ G. & M. Richards fee | | | | | | |
| | ½ W. W. & N. K. Gordon fee | | | | | | |
| | ½ Sheftall " | | | | | | |
| | ½ Rogers " | | | | | | |
| | ½ Douglass " | | | | | | |
| | ½ Cooper " | | | | | | |
| | ½ Hunter & Gammell " | | 565 90 | | | | |
| Sept. 14. | ½ McDermott " | | | | | | |
| | ½ Baldwin & Co " | | | | | | |
| | ½ costs | | 37 99 | | | | |
| 1874. | | | | | | | |
| Jan. 17. | ½ portion of Austell " | | 500 00 | | | | |
| 14. | cash p'd A Roane, Ex. (C. F. P.) | | 1,060 00 | | | | |
| 19. | " " " | | 2,000 00 | | | | |
| | " " " | | 200 00 | | | | |
| | | | 110,235 10 | | | | 110,235 10 |
| 1874. | | | | 1874. | | | |
| Feb. 1. | To balance | | 109,641 71 | Feb. 1. | By ½ nett fees collected | | 111,823 58 |
| " " | | | 2,195 05 | Apl. 18. | " ½ of costs in Lamar case, paid by the firm, which case Jas. Hughes withdrew from after the payment | | 13 18 |
| | | | | | | | 111,836 76 |
| | | | 111,836 76 | | | | 2,195 05 |

[42]

EXHIBIT J. W. D., No. 3.

M — DR. — JAMES W. DENVER. — CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1874. | | | | 1874. | | | |
| Jan. 1. | To balance of account | | $93,294 98 | Jan. 17. | By error in account, p. 263 | | $200 00 |
| 17. | part of fee in Austell case | | 129 04 | | cash paid B. S. Roberts | | 468 00 |
| | " " Hunter " | | 656 00 | 28. | ¼ janitor's wages for 8 mos. | | 120 00 |
| | " " and costs Nutt case | | 4,000 00 | 1873. | " " " 7 " | | 210 00 |
| | ½ fee in Sykes " | | 338 98 | Mar. 23. | cash, printing Haskins case | | 41 18 |
| | ½ " Cones " | | 4,629 92 | | " Cones " | | 35 75 |
| | ½ " Street & Allen case | | 251 18 | | " " " | | 21 00 |
| | | | | May 23. | " Derby " | | 12 75 |
| | ½ " Lippman " | | 326 92 | | " " " | | 3 00 |
| 1873. | ½ " Cartwright " | | 496 43 | | cash, Moore's bill printing | | 93 68 |
| June 5. | ½ " Cohen " | | | | " Wheeln's " plumbing | | 11 90 |
| | ½ " Cobias " | | 1,965 18 | | " McGlue's bill coal | | 61 57 |
| 19. | ½ " Headman " | | | | " cert. in Hill case | | 1 00 |
| | ½ " J. & M. Richards case | | | July 1. | " post-office box rent | | 4 74 |
| | ½ fee, W. W. & N. K. Gordon case | | | 10. | " baliff fees | | 10 00 |
| | | | | Aug. 1. | " office rent for July | | 75 00 |
| | ½ fee, Sheftall " | | | Sept. 1. | " " August | | 75 00 |
| | ½ " Rogers " | | | Oct. 1. | " " September | | 75 00 |
| | ½ " Douglass " | | | | " post-office box rent | | 4 74 |
| | ½ " Cooper " | | | Nov. 1. | " office rent for October | | 75 00 |
| | ½ " Hunter & Gammell case | | 565 90 | | " print. Clark & Boorman case | | 150 00 |
| Sept. 14. | ½ " McDermot " | | | Dec. 1. | " " " " " | | 40 50 |
| | ½ " Baldwin & Co. " | | | 3. | " office rent for November | | 75 00 |
| | ½ " of costs | | 37 99 | | " gas bill | | 2 70 |
| 1874. | | | | 20. | " printing Clark case | | 40 50 |
| Jan. 19. | expenses in W. Mitchell case paid by Jno. W. Harlan | | 578 90 | 1874. | | | |
| 1873. | | | | Jan. 1. | " post-office box rent | | 4 90 |
| Nov. 21. | cash from C. F. Peck | | 5,000 00 | 9. | " stove for office | | 16 00 |

EXHIBIT J. W. D., No. 3—Continued.

DR. JAMES W. DENVER. CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1873. | | | | 1874. | | | |
| June 14. | | fee & costs in Markham case | 1,187 13 | Jan. 12. | | " office rent for December | 75 00 |
| 1874. | | | | | | " gas bill | 1 80 |
| Jan. 25. | | fee, Wilson case | 201 63 | 28. | | " printing Habersham case | 10 50 |
| | | cash, costs from D. S. & Co | 18 00 | 29. | | " coal bill | 39 13 |
| | | | | | | Balance | 111,622 84 |
| | | | $113,678 18 | | | | $113,678 18 |
| [43] | | | | | | | |
| 1874. | | | | 1874. | | | |
| Feb. 1. | | To balance | $111,622 84 | Feb. 1. | | By ½ nett fees collected | $111,823 58 |
| | | cash, old pipe sold | 4 50 | April 20. | | cash, certificate in Hardee case | 1 00 |
| April 18. | | cash, portion of fees in D. Martin and Battersby and Metcalf cases, viz: $13,465.34 and $24,362.10 | 19,199 74 | 18. | | " costs in Court of Claims | 20 00 |
| | | ½ of the costs in Lamar case | 23 50 | 27. | | " Morrison's bill, stationery | 37 50 |
| | | ½ of costs in Lamar case, which were paid by the firm of H. D. & P., credited to Jas. Hughes | 6 59 | | | " janitor's wages for April | 30 00 |
| May 11. | | cash, fees in Hardee & Tyler cases | 14,018 61 | | | " T. L. Holbrook, salary 4 mos | 100 00 |
| | | | | | | " paid for C. F. Peck | 90 75 |
| | | | | | | " printing Judd & Detweiler | 95 50 |
| | | | | | | " office rent for April | 75 00 |
| | | | | | | " expenses in Dauphin case | 533 28 |
| | | | | | | " A. St. C. Denver, bal. of acc't | 126 03 |
| | | | | | | " expenses in Williams case | 80 00 |
| | | | | | | " ½ of Moore's bill, printing | 226 50 |
| | | | | | | " cert. Battersby & Tyler cases | 2 00 |
| | | | | Feb. 1. | | " office rent for January | 75 00 |
| | | | | 4. | | " janitor's wages, January | 30 00 |
| | | | | 9. | | " printing Haskell case | 3 50 |
| | | | | Mar. 2. | | " gas bill and broom | 2 80 |
| | | | | | | " office rent for February | 75 00 |
| | | | | | | " janitor's wages for February | 30 00 |
| | | | | April 1. | | " janitor's wages for March | 30 00 |
| | | | | | | " Post-office box rent, &c | 4 53 |
| | | | | 9. | | " office rent for March | 75 00 |
| | | | | 17. | | " costs in Tyler case | 13 12 |
| | | | | | | Balance | 31,295 69 |
| | | | $144,875 78 | | | | $144,875 78 |
| | | To balance | $31,295 69 | May 16. | | By ½ of cash paid John S. Williams, on his judg't vs. The Firm | $1,000 00 |

[44] EXHIBIT J. W. D., No. 4.

DR. CHARLES F. PECK. CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1874. | | | | 1874. | | | |
| Jan. 1. | | To balance of old account | $93,505 93 | Jan. 17. | | By cash paid B. S. Roberts | 468 00 |
| | | errors in account | 87 | 1873. | | | |
| 17. | | part of fee in Hunter case | 244 00 | Nov. 21. | | " " James W. Denver | 5,000 00 |
| | | " " and costs in Nutt case | 4,000 00 | Dec. 22. | | " " Cox & Payne, attorneys Chadwick case | 2,193 75 |
| | | ½ fee in Sykes case | 338 99 | | | " " A. Roane, ex. for Jas. Hughes' estate | 3,000 00 |
| | | ½ fee in Cones case | 4,629 92 | | | " p'd reporter in Chadwick case | 20 00 |
| | | ½ fee in Street and Allen cases | 251 17 | | | | |
| | | ½ fee in Lippman case | 320 92 | | | | |
| | | ½ fee in Cartwright case | 496 43 | | | | |

EXHIBIT J. W. D., No. 4—Continued.

DR. CHARLES F. PECK. CR.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1873. | | | | | | |
| June 5. | ½ fee in Cohen case ..... ½ fee in Cobias case ..... | 1,965 18 | | | By cash paid Horner & Benedict, att'ys, case | 25 00 |
| 19. | ½ fee in Headman case .. ½ fee in J. & M. Richards case ..... | | | | " " print. Habersham case ..... | 7 50 |
| | ½ fee in W. W. & N. K. Gordon case ..... | | 1874. | Jan. 28. | half of janitor's wages, 8 mos ..... | 120 00 |
| | ½ fee in Sheftall case .... | | | | cash paid A. Roane, adm'r, for Jas. Hughes' estate. | 200 00 |
| | ½ fee in Rogers case ..... | | | | Balance ..... | 114,206 18 |
| | ½ fee in Douglass case... | | | | | |
| | ½ fee in Cooper case ..... | | | | | |
| | ½ fee in Hunter and Gammel case ..... | 565 90 | | | | |
| Sept. 14. | ½ fee in McDermott case. ½ fee in Baldwin & Co. case ..... | | | | | |
| | ½ fee costs ..... | 37 98 | | | | |
| Nov. 18. | fee Battersby case ..... | | | | | |
| | " " and Cohen case. | | | | | |
| | " " and Low ..... | | | | | |
| | " C. Green case..... | | | | | |
| | " Beach & Co. case.... | | | | | |
| | " Watter & Co. case .. | | | | | |
| | " C. Hill case ..... | | | | | |
| | " Heinsius case ..... | | | | | |
| Dec. 19. | " Lathrope case.....$18,920.97 Less error Baldwin & Co. fee. 43.83 | 18,877 14 | | | | |
| | | $125,240 43 | | | | $125,240 43 |

[45]

| | | | | | | |
|---|---|---|---|---|---|---|
| 1874. | | | 1874. | | | |
| Feb. 1. | To balance ..... | $114,206 18 | Feb. 1. | By ½ nett fees collected..... | | $111,823 58 |
| April 18. | part of fees in D. A. Martin & Battersby and Metcalf cases ..... | 18,627 70 | April 4. | cash, stationery..... | | 5 05 |
| | ½ costs in Lamar case ... | 23 50 | | " printing Patten case | | 15 75 |
| | ½ of costs in Lamar case, paid by the firm and credited to James Hughes ..... | 6 59 | | " " Haskell case ..... | | 13 50 |
| 27. | cash from J. W. Denver. | 90 75 | | " paid Hunton & Chadwick ..... | | 2,250 00 |
| May 11. | " portion of fees and costs in Tyler and Hardee cases ..... | 12,737 80 | 9. | " sundries ..... | | 23 50 |
| | | | 17. | " expenses to N. Y... | | 40 00 |
| | | | 20. | " certificate Hardee case ..... | | 1 00 |
| | | | 27. | " ½ Moore's bill ..... | | 226 50 |
| | | | | Balance ..... | | 31,295 69 |
| | | $145,692 52 | | | | $145,692 22 |
| | To balance ..... | $31,295 69 | May 16. | By ½ cash paid John S. Williams, on his judgment vs. The Firm..... | | 1,000 00 |

[46]

EXHIBIT J. W. D., No. 5.

DR. CASH ACCOUNT. CR.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1874. | | | 1874. | | | |
| Jan. 17. | To ½ Anstell fee ..... | $629 04 | Jan. 17. | By Jas. Hughes ..... | | $500 00 |
| | Jas. Hughes..... | 125 39 | | J. W. Denver ..... | | 129 04 |
| | fee, Nutt case and costs.. | 12,000 00 | | expense ..... | | 125 39 |
| | " Cartwright case and costs ..... | 1,489 29 | | Jas. Hughes ½ Nutt fee..... | | 4,000 00 |
| | " Hunter case and costs | 900 00 | | J. W. Denver ½ " " ..... | | 4,000 00 |
| | " Sykes " " | 677 98 | | C. F. Peck ½ " " ..... | | 4,000 00 |
| | " Cones " " | 9,259 84 | | J. Hughes, ½ Cartwright fee.. | | 496 43 |
| | " Street & Allen case and costs..... | 502 35 | | J. W. Denver ½ " " .. | | 496 43 |
| | " Lippman case ..... | 653 84 | | C. F. Peck ½ " " .. | | 496 43 |
| | C. F. Peck..... | 468 00 | | J. W. Denver, Hunter fee.... | | 656 00 |
| | J. W. Denver..... | 468 00 | | C. F. Peck, " " .... | | 244 00 |
| | James Hughes ..... | 468 00 | | J. W. Denver, ½ Sykes fee .. | | 338 99 |
| | Markham fee and costs... | 1,187 13 | | C. F. Peck, ½ " " .. | | 338 99 |
| | Cohen " " } Cobias " " } | 5,295 54 | | J. W. Denver, ½ Cones fee... | | 4,629 92 |
| | Headman " " ... | | | C. F. Peck, ½ " " ... | | 4,629 92 |
| | Richards " " ... | | | J. W. Denver, ½ S. and A. fee | | 251 18 |
| | Gordon " " ... | | | C. F. Peck, ½ " " | | 251 17 |
| | Sheftall " " .... | | | J. W. Denver, ½ Lippman fee. | | 326 92 |
| | Rogers " " ... | | | C. F. Peck, ½ " " . | | 326 92 |
| | | | | R. S. Roberts, attorney ..... | | 1,404 00 |
| | | | | Jas. W. Denver, Markham fee..... | | 1,187 13 |

EXHIBIT J. W. D., No. 5—Continued.

DR. CASH ACCOUNT. CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1874. | | | | 1874. | | | |
| | | Douglass " " ... | | | | Jas. W. Denver, ½ Cohen & Cobias fee | 1,965 18 |
| | | Cooper " " ... | | | | C. F. Peck, Cohen & Cobias fee | 1,965 18 |
| | | Hunter & Gammell fee and costs | 1,697 70 | | | J. Hughes, Cohen & Cobias fee | 1,965 18 |
| | | Duncan, Sherman & Co., printing | 277 50 | | | J. Hughes | 565 90 |
| | | McDermot fee | | | | J. W. Denver | 565 90 |
| | | Baldwin & Co. fee | 70 13 | | | C. F. Peck | 565 90 |
| | | Battersby fee | | | | paid for printing | 277 50 |
| | | " and Cohen fee | | | | J. W. Denver, fee McD. and B | 37 99 |
| | | " and Low fee | | | | C. F. Peck, " " | 37 98 |
| | | Green & Co. fee | | | | Jas. Hughes " " fee overpaid, $40.83 | 37 99 |
| | | M. Beach & Co. fee | | | | By C. F. Peck fees | 10,000 00 |
| | | Wetter fee | | | | " " " | 5,000 00 |
| [47] | | Hill fee | | | | " " " | 3,877 14 |
| | | Heinsius fee | | | | | 18,877 14 |
| | | Lathrop fee | 18,920 97 | | | Above error of D. S. & Co. corrected. | |
| | 19. | expenses in Warren Mitchell case | 578 90 | Jan. | 19. | By J. W. Denver, Warren Mitchell case | 578 90 |
| Nov. | 21. | C. F. Peck | 5,000 00 | Nov. | 21. | J. W. Denver cash | 5,000 00 |
| Dec. | 22. | " | 5,246 25 | Dec. | 22. | Hunton & Chadwick | 2,193 75 |
| Jan. | 25. | Wilson fee | 201 63 | | | A. Roane, ex. J. Hughes | 1,000 00 |
| Apr. | 18. | D. A. Martin fee | 13,465 34 | | | " " | 2,000 00 |
| | | Batersby and Metcalf fee. | 24,362 10 | | | expense | 52 50 |
| | 20. | Tyler fee | 4,437 35 | Jan. | 25. | J. W. Denver | 201 63 |
| | 27. | Hardee fee | 22,259 06 | Apr. | 18. | " portion Martin fee | |
| Feb. | 1. | old pipe sold | 4 50 | | | " " R. & M. " | 19,199 74 |
| Jan. | 25. | Duncan, Sherman & Co., costs | 18 00 | | | C. F. Peck, " | 18,617 70 |
| Apr. | 18. | costs in Lamar case | 47 00 | May | 11. | J. W. Denver, portion Tyler fee | |
| | 27. | J. W. Denver, cash for C. F. P | 90 75 | | | J. W. Denver, portion Hardee fee | 14,018 61 |
| | | C. F. Peck, cash expenses | 443 25 | | | C. F. Peck, portion Hardee fee | 12,737 80 |
| | | J. W. Denver, cash " | 3,053 10 | Feby. | 1. | J. W. Denver, cash | 4 50 |
| | | | | Apr. | 18. | ½ of costs in Lamar case, paid by the firm | 13 18 |
| | | | | | 27. | C. F. Peck, from J. W. D | 90 75 |
| | | | | | | sundry expenses | 443 25 |
| | | | | | | " " | 3,053 10 |
| | | | | | | C. F. Peck, costs in Lamar case | *16 91 |
| | | | | | | J. W. Denver, costs in Lamar case | *16 91 |
| | | | | Jan. | 25. | J. W. Denver, D. S. & Co., costs | 18 00 |
| | | | $134,957 93 | | | | $134,957 93 |

*Costs $47. $19.50 paid before Jas. Hughes withdrew from case.

[48] EXHIBIT J. W. D., No. 6.

DR. EXPENSE ACCOUNT. CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1874. | | | | 1874. | | | |
| Jan. | 17. | To Wheelan's bill, repairs | 14 39 | Jan. | 17. | By Jas. Hughes, cash | $125 39 |
| | | Mattingly fee, Stewart case. | 100 00 | | 28. | J. W. Denver, " | 330 00 |
| | | costs dep. in court | 10 00 | | | C. F. Peck, " | 120 00 |
| | | subpœna | 1 00 | Apl. | 27. | C. F. Peck, " | 321 25 |
| | 28. | B. Williams' wages, 15 mos. | 450 00 | | | C. F. Peck, " | 52 50 |
| 1873. | | | | | | J. W. Denver, " | 2,723 10 |
| Mar. | 23. | printing Haskins case | 41 18 | | | | |
| | | " Cones " | 56 75 | | | | |
| May | 23. | " Derby " | 15 75 | | | | |
| | | " Moore's bill | 93 68 | | | | |
| | | plumbing, Wheelan's bill | 11 90 | | | | |
| | | coal, McGlue's | 61 57 | | | | |
| | | certificate, Hill case | 1 00 | | | | |
| July | 1. | rent p. o. box, &c | 4 74 | | | | |
| | 10. | bailiff's fees | 10 00 | | | | |
| Aug. | 1. | office-rent, July | 75 00 | | | | |
| Sept. | 1. | " Aug | 75 00 | | | | |
| Oct. | 1. | " Sept | 75 00 | | | | |
| | | p. o. box rent, &c | 4 74 | | | | |
| Nov. | 1. | office-rent for Oct | 75 00 | | | | |
| | | print'g Clark & Boorman case | 150 00 | | | | |
| Dec. | 1. | " " " | 40 50 | | | | |

EXHIBIT J. W. D., No. 6—Continued.

| DR. | | EXPENSE ACCOUNT. | | CR. |
|---|---|---|---|---|
| 1873. | | | | |
| Dec. | 3. | office-rent for Nov | 75 00 | |
| | | gas-bill | 2 70 | |
| | 20. | printing Clark case | 40 50 | |
| | 22. | reporter Chadwick case | 20 00 | |
| | | Horner & Benedict " | 25 90 | |
| | | printing Habersham " | 7 50 | |
| 1874. | | | | |
| Jan. | 1. | office-rent, Dec | 75 00 | |
| | | p. o. box rent, &c | 4 90 | |
| | 9. | stove for office | 16 00 | |
| | 12. | gas-bill | 1 80 | |
| [49] | 28. | printing Habersham case | 10 50 | |
| | 29. | coal-bill | 39 13 | |
| Feb. | 1. | office-rent, Jan | 75 00 | |
| | 4. | janitor for " | 30 00 | |
| | 9. | printing Haskell case | 3 50 | |
| Mar. | 2. | gas-bill and broom | 2 80 | |
| | | office-rent for Feb | 75 00 | |
| | | janitor for Feb | 30 00 | |
| Apr. | 1. | " March | 30 00 | |
| | | p. o. box rent, &c | 4 53 | |
| | 4. | stationery | 5 00 | |
| | | printing Patten case | 15 75 | |
| | | " Haskell " | 13 50 | |
| | 9. | cost Sup. Ct., Battersby case | 12 50 | |
| | | carriage-hire | 1 50 | |
| | | copy of record, Lamar | 7 50 | |
| | 17. | C. F. P., expenses to N. Y. | 40 00 | |
| | 20. | cert. in Hardee case | 1 00 | |
| | 27. | Moore's old bill printing | 453 00 | |
| | 9. | office-rent for March | 75 00 | |
| | 17. | costs, Tyler case | 13 12 | |
| | 20. | " Court of Claims | 20 00 | |
| | | certificate, Hardee case | 1 00 | |
| | 27. | stationery, Morrison | 37 50 | |
| | | janitor for April | 30 00 | |
| | | T. L. Holbrook, salary 4 mos. | 100 00 | |
| | | printing, Judd & Detweiler. | 95 50 | |
| | | office-rent for April | 75 00 | |
| | | expenses Dauphin case | 533 28 | |
| | | A. St. C. Denver, bal. acct | 126 03 | |
| | | Barnett's expenses, Williams case | 80 00 | |
| | | certificates, Tyler & B. cases. | 2 00 | |
| | | | 3,674 24 | 3,674 24 |

50 EXHIBIT J. W. D., No. 7.

GAZAWAY B. LAMAR *vs.* THE UNITED STATES. } No. 3222. U. S. Court of Claims.

Now comes James Hughes, one of the attorneys of record in this case, and asks leave to withdraw his appearance herein.

(S'g'd) JAMES HUGHES.

EXHIBIT J. W. D., No. 8.

GAZAWAY B. LAMAR *vs.* THE UNITED STATES. } No. 3222. U. S. Court of Claims.

Now comes James Hughes, one of the attorneys of record in this case, and asks leave to withdraw his appearance herein.

(S'd) JAMES HUGHES.

The paper containing the above is endorsed, as follows: G. B. Lamar vs. The United States. No. 3222. Motion to withdraw appearances as attorney. Filed Jan. 9, 1873. A. H.

Allowed 9th Jan., 1873. E. PECK, *Judge.*

At a Court of Claims held at the Capitol on the 9th day of January, 1873, among other entries of record, is the following:

GAZAWAY B. LAMAR
*vs.*
THE UNITED STATES. } No. 3222.

M'r Hughes filed a motion asking leave to withdraw his appearance as attorney. Allowed.

I hereby certify that the foregoing are true copies of the original paper on file in the clerk's office of the Court of Claims, and of the endorsement thereon, and of the original entry in the journal of the court as above stated.

51 In testimony whereof I have hereto set my hand and affixed the seal of the court, this 1st day of May, 1874.

[SEAL.] ARCHIBALD HOPKINS,
*Ch. Clerk Ct of Claims.*

EXHIBIT J. W. D., No. 9.

WASHINGTON, D. C., *May* 14, 1872.

Hon. JAMES HUGHES:

MY DEAR SIR: After the first ebullition of your anger had passed, I had hoped that you would have seen the unreasonableness of the demand you made on me to exclude my brother from my office, but your letter to him of the 7th shows that you have not. By my direction he will not answer that letter; I am responsible for that and for keeping him in my office, which I will continue to do. He costs you nothing, and I don't know by what right you assume to dictate who I shall or shall not have in my office.

As to your insinuations and inuendoes relative to the conversation between us about the cause of your hostility to him, I have only this to say, that they are without any good foundation, and that the facts, in my opinion, afford you no just grounds of complaint. You are now fully answered as to my brother, and the correspondence is closed on that subject. The real cause of difference between us was the almost total neglect by you of the old business of Hughes, Denver & Peck, when, by the terms of the dissolution of March 18, 1869, you, as well as myself, were bound to give it proper attention. To avoid that issue, you invent a complaint against my brother. That will not serve you; you cannot shift to him what was began with me. It has been in your power at any time to have removed the cause of difference between us, and that you have not done so is no fault of mine.

And now, sir, a word in conclusion. After what has occurred it is time for us to separate. We can, as soon as M'r Peck gets back, divide our business fairly, or get others to do it for us; but however it may be done, I demand that the business relations between you and myself shall be definitely and finally closed at the earliest moment practicable.

Yours, respectfully,

J. W. DENVER.

52 EXHIBIT J. W. D., No. 10.

WASHINGTON, D. C., *June* 10, 1872.

General J. W. DENVER, Present:

A letter from you dated "May 14, 1872," was left in my office with Mr. Roane during my absence in Indiana. I did not see it until the 7th of June instant, when I read it, and this is my earliest convenient opportunity for answering it.

I pass over all except the concluding clause of the last paragraph, as unworthy of any further reply at present than a protest against the errors, inaccuracies, and misstatements therein contained.

A time and place may be found hereafter when and where the truth of your statements and positions may be tested before disinterested triers.

You conclude your letter in these words: "But however it may be done, I demand that the business relations between you and myself shall be definitely and finally closed at the earliest moment practicable."

I presume that you carefully considered the full scope and effect of your demand before you made it. There is but one course open to me consistent with the principles which I observe as a rule of action, and that is at once to accede to your demand, which I now do. I am persuaded that in your present temper and position, no amicable negotiations will suffice "to close the business relations definitely and finally," at present existing between us.

I do not intend to conduct in person any business of a nature that may lead to controversy with you, and will therefore put this business in the hands of counsel, who, when selected, will give you notice of the fact.

You are not bound, however, to wait for the appointment of counsel on my part to follow up your "demand," by proper legal proceedings, to close "definitely and finally" our business relations "at the earliest moment practicable."

Do not charge any delay that may occur to me. I will afford you every facility in my power to accomplish the purposes of your demand, taking care always to protect the interests of our absent partner and our numerous clients.

In the meantime, as our firm is already formally dsisolved, I beg leave to remind you that, except by courtesy, consent, or express authority, no single member is authorized to act for the firm.

In reference to your brother, I have indicated in previous letters the course I will pursue to terminate his connection with the business of our firm, and occupancy of our office without right, and against my wishes. It was with amazement that I found, on a recent examination of our letter-book, that he has been conducting correspondence in some of our important cases and signing the firm-name to letters. This was wholly unauthorized, and contrary to the usage of our office, and even your sanction cannot excuse or justify it.

Very respectfully,

JAMES HUGHES.

53 *Answer of Cha's F. Peck.—Filed*

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR, &C., OF James Hughes, deceased, plaintiff,
*vs.*
CHARLES F. PECK AND JAMES W. DENVER defendants.
} In equity. No. 3706. Eq. doc. No. 13.

The separate answer of Charles F. Peck to the bill of complaint of Archibald Roane, executor of the last will and testament of James Hughes, deceased, against him and James W. Denver, in the supreme court of the District of Columbia, in chancery exhibited.

This defendant, now and at all times, saving and reserving unto himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, and insufficiences in the said bill of complaint contained, for answer thereunto, doth answer and say as follows:

1st. To the allegations in the first paragraph of the said bill contained he answers and says: That the partnership in the practice of the law and the prosecution of claims between the said James Hughes and James W. Denver and himself, and the establishment thereby of the firm of Hughes, Denver & Peck, commenced in June, 1865, by the association of this respondent with the said Hughes and Denver, who had been for a while in partnership before then; that it is true that the said James Hughes was possessed of a respectable but not extraor-

54 dinary political and legal reputation, and had before then occupied and resigned the position of judge of the Court of Claims of the United States; that there were no written articles of partnership, but the firm was established for the practice of law and the prosecution of claims against the United States in the Court of Claims, before Congress, and in the departments at the city of Washington, each partner having an equal interest in the earnings and profits, and being equally liable for all expenses and charges; that it did obtain a large and lucrative practice, especially in the Court of Claims; that there was no definite and formal agreements as to the particular part that each should take in the conduct of the business, but the said Hughes and this respondent tacitly took especial charge of the business in the courts and the said Denver of that in the departments and before Congress, each taking that by general tacit consent and acquiescence for which he was best fitted and which he preferred; that neither partner had or assumed superiority over the others, and the said Hughes had neither a leading or directory interest or control in the firm, but only that equality of interest and direction to which his respectable professional attainments, ability, and local reputation entitled him, he not being more widely known than the said Denver, nor known at all in by far the larger part of the United States, nor attracting to the firm more business than the said Denver, nor attending more efficiently to business than his partners even at the beginning and less so afterwards; that the business soon grew to large proportions, and it became necessary to employ clerks, and the firm reaped large profits, by far more owing to the labors of the said Denver and this respondent than to those of the said Hughes, who was neither of industrious nor regular habits; and that, in short, the said Hughes never was, in any wise, a more important, useful, or laborious member of said firm than either the said Denver or this respondent, and afterwards became far less so, and, fact, in entirely useless.

55 3d. To the allegations in the third paragraph of said bill contained, this respondent answers and says: That to defray the expenses of the firm, and to collect testimony, and to prepare their causes, each partner contributed considerable amounts out of the part of the earnings and profits received by him, but that neither the said Hughes nor this respondent ever contributed anything thereto out of their private incomes, nor had either of them any private income out whereof to contribute thereto; but the said Denver did, in 1866, contribute thereto some two or three thousand dollars, proceeds of sales of his private property.

4th. To the allegations in the fourth paragraph of the said bill of complaint contained, this respondent answers and says: That Exhibit A. R., No. 1, of the bill, is a true copy of an agreement of dissolution of the said partnership (continued thereafter for only the disposition, settlement, and closing up of its affairs and of such business as the firm then had), which was entered into by and between the partners and signed by each, on the 18th of March, 1869; by the third stipulation whereof each partner was bound, as he had been bound before, faithfully to give his personal attention to closing up the business of the firm as rapidly as possible; all the duties and obligations of each as partners, under their original terms of association, continuing to exist in full force as to all the unfinished business then on hand, and as to that alone the partnership continuing.

5th. To the allegations in the 5th paragraph (or the 5th and 6th) contained, this respondent answers and says: That by the terms of the said third stipulation the business of the firm, theretofore received and then in hand, was to be, by its very words, "closed up as rapidly as possible by the members of the firm, as partners, under their original terms of association, and in the firm name;" that, as to all such unfinished

56 business, their joint and equal interest and their joint and equal duty continued, and were co-relative, and the right of each to an equal interest in the earnings depended upon the faithful performance of that duty, and of an equal share of labor and attention; that the said agreement was duly made, and was valid and binding on all the parties, and its construction and effect are questions of law; that Exhibit A. R., No. 2, is a true copy of a letter written by James Hughes, on the 13th of August, 1869, at Washington, to the said Denver, and of the endorsements of this respondent and of the said Denver thereon; and that the said letter and endorsements constituted a supplementary agreement between the said three parties, and became a part of the agreement of March 18, of the same year; that the right of the estate of either partner to the interest stipulated for in the supplementary agreement depended upon his performance of his duties as partner, up to the time of his death, and by the proposition itself the said Hughes admitted that the amount of interest was justly dependent on length and fidelity of service; that it is true that whatever was meant by the endorsement of the said Denver, it was no more than a statement of a legal proposition; and that the said Hughes did at once accept it; and that the agreement, thus qualified, became the basis of the future operations of the three parties, and of the rates of their divisible interest, respectively, the whole agreement being that each partner should continue faithfully to attend to the business of the dissolved firm, until it should be concluded and closed, or until his death; and that if he did so, and only if he did so, and should die before it was closed, he should be deemed to have become entitled, by having earned it, to one-third or one-fourth, as the case might be, of the fee in each case. This respondent never meant

to agree, and never did agree, that if the said Hughes or the said Denver should choose, or both should, one or both of them should be at liberty wholly to cease to attend to the business, and that he would in
57 that case work for their benefit equally with his own, while they should live, and for years after their death, and be content with one-third of the fees so earned.

7th. To the allegations in the seventh paragraph (or 7th and 8th) of the said bill contained, this respondent answers and says: That the said Archibald Roane was the clerk of the firm and kept the books during part of the time alleged by him; that the said James Hughes died testate, as alleged, and the said Roane is executor of his will, and has qualified as such, as alleged. It is also true that at the time of the death of the said James Hughes there still remains unsettled a large number of partnership cases, belonging to the said firm, in different stages of progress, and that were in the hands of the firm on the 18th of March, 1869, for a statement of all whereof he refers to exhibits J. W. D. No. 1 of the answer of his co-defendant, Denver, which he prays may be taken and considered as exhibited herewith, and as a part of this answer; in addition to which are certain interests (or rather an uncertain interest) in certain claims for the refunding of taxes paid on cotton, and the claim of the heirs of Ludovicus Belding to the Hot Springs of Arkansas, which the said Hughes pretended to take charge of after the dissolution. Those marked W are worthless, and those marked D doubtful; and those decided adversely by the Court of Claims are appealed to the Supreme Court of the United States. In the first case named, that of Charles H. Adams, there is no fee; the claimant expected to recover in that case some $23,400. The Court of Claims gave him judgment for $2,080 only, whereupon an appeal was prayed and allowed to the Supreme Court of the United States, and the said Hughes took the case into his special and sole charge, and then wholly failed and neglected to prosecute it, never filing the record in the Supreme Court, although the judgment was rendered on the 8th of May, 1872, on account of which neglect, long unknown to them,
58 this respondent and the said Denver have been compelled to relinquish all claim to any fee in the case, and have a just claim against the estate of the said Hughes for two-thirds of the fee that would have been realized but for his gross neglect and inattention, of which this was by no means a solitary or extraordinary instance. The last case mentioned in said Exhibit J. W. D. 1 is a suit for $10,000 in Kansas Pacific Railroad bonds instituted for the use of the firm for services rendered by it to Joseph B. Stewart, and the claim is probably worthless. The firm also had for collection before the dissolution a claim of Perry Fuller and Alexander McDonald against the United States for some sixty thousand dollars for supplies furnished to Indians; after prosecuting which for a time, by some arrangement between the claimant and the said Hughes, for reasons unknown to this respondent, Chipman, Hosmer & Co. were employed to prosecute it jointly with him; but the result was that it was prosecuted by them alone; that it was collected, and that no part of the fee was received by the firm. And the said Hughes, having, in 1866, borrowed two thousand ($2,000) dollars of the said Fuller, and given his note therefor, which is in the hands of the widow of the said Fuller, he refused to pay the same when payment was demanded of him; sometimes, as this respondent is informed, alleging that the said Fuller owed him, and sometimes that he owed the firm a larger sum than the amount of the note, for professional services; whereby, and as the said Fuller could not have owed him individually for legal services, he has compensated said note with a debt due the firm,

and became thereby released of it, the holder of the note abandoning all claims against him. In further answer to the allegations of this paragraph, this respondent states that according to the books of the firm, as kept by the said plaintiff, the several partners of said firm stood charged up to and on the first day of January, 1874, for money received by each for fees and commissions on collections, after deduction of all moneys paid by each towards expenses of the firm and otherwise, as follows:

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|---|---|
| The said James Hughes | $99,419 60 |
| The said James W. Denver | 93,294 98 |
| This respondent | 93,505 93 |

And, as appears by the books subsequently kept, and as has been ascertained and determined upon adjustment of accounts by the plaintiff and themselves, the said partners were chargeable up to and on the first day of February, 1874, for moneys received, less expenses and outlays, as follows:

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|---|---|
| The said James Hughes | $109,641 71 |
| The said James W. Denver | 111,622 84 |
| This respondent | 114,206 18 |

And the one-third of all net fees collected being $111,823.58, the balance in favor of said Hughes was $2,195.05. Since when the said Denver and this respondent are charged each, for net fees received over and above expenses of the firm paid by each and other moneys paid for it, $30,295.69. All which more fully appears by the accounts exhibited, taken from the books, with the answer of the said Denver, marked respectively J. W. D. No. 2, J. W. D. No. 3, and J. W. D. No. 4, and which are prayed to be taken as parts of this answer. No general cash account or expense account was kept by the said Roane in the books of the firm, and it is not necessary to state either, up to January, 1874. For a correct account of all cash received and paid out by the firm, and of expenses and outlays since January 1st, 1874, this respondent refers to Exhibits J. W. D. No. 5 and J. W. D. No. 6 of the answer of the said Denver, and prays that they may be taken as parts of this answer. And this respondent, further answering, says that such judgments were obtained as are in the said paragraphs mentioned by himself and the said Denver, without assistance from the said Hughes, long after the dissolution of the said partnership, as follows, that is to say:

60 1st. In favor of Gazaway B. Lamar, June 2, 1873, for $579,343.57.

2d (in which is included the claim of Martin for $44,884.48). In the fee wherein the said Hughes had no interest, nor has the plaintiff, his executor, any; the fee being ten per cent., and the part of Martin twenty per cent. additional.

3d. Of William Battersby and Metcalf's executor, May 20, 1873, for $487,242.09, the fee whereon was five per cent.

4th. Of Alfred L. Tyler, May 19, 1873, for $88,892.31, the fee whereon was five per cent.

5th. And of John L. Hardee, March 31, 1873, for $103,856.86, on $15,000 whereof was no fee, and the fee paid was $22,214.21.

9th. To the allegations in the ninth paragraph of the said bill contained, this respondent answers and says, that the said Exhibit J. W. D. No. 1 sets forth and shows all the claims under the control of this respondent and the said Denver, maturing for hearing and embraced within the said agreement, or that were in the hands of said firm for collec-

to agree, and never did agree, that if the said Hughes or the said Denver should choose, or both should, one or both of them should be at liberty wholly to cease to attend to the business, and that he would in that case work for their benefit equally with his own, while they
57 should live, and for years after their death, and be content with one-third of the fees so earned.

7th. To the allegations in the seventh paragraph (or 7th and 8th) of the said bill contained, this respondent answers and says: That the said Archibald Roane was the clerk of the firm and kept the books during part of the time alleged by him; that the said James Hughes died testate, as alleged, and the said Roane is executor of his will, and has qualified as such, as alleged. It is also true that at the time of the death of the said James Hughes there still remains unsettled a large number of partnership cases, belonging to the said firm, in different stages of progress, and that were in the hands of the firm on the 18th of March, 1869, for a statement of all whereof he refers to exhibits J. W. D. No. 1 of the answer of his co-defendant, Denver, which he prays may be taken and considered as exhibited herewith, and as a part of this answer; in addition to which are certain interests (or rather an uncertain interest) in certain claims for the refunding of taxes paid on cotton, and the claim of the heirs of Ludovicus Belding to the Hot Springs of Arkansas, which the said Hughes pretended to take charge of after the dissolution. Those marked W are worthless, and those marked D doubtful; and those decided adversely by the Court of Claims are appealed to the Supreme Court of the United States. In the first case named, that of Charles H. Adams, there is no fee; the claimant expected to recover in that case some $23,400. The Court of Claims gave him judgment for $2,080 only, whereupon an appeal was prayed and allowed to the Supreme Court of the United States, and the said Hughes took the case into his special and sole charge, and then wholly failed and neglected to prosecute it, never filing the record in the Supreme Court, although the judgment was rendered on the 8th of May, 1872, on account of which neglect, long unknown to them, this respondent and the said Denver have been compelled to re-
58 linquish all claim to any fee in the case, and have a just claim against the estate of the said Hughes for two-thirds of the fee that would have been realized but for his gross neglect and inattention, of which this was by no means a solitary or extraordinary instance. The last case mentioned in said Exhibit J. W. D. 1 is a suit for $10,000 in Kansas Pacific Railroad bonds instituted for the use of the firm for services rendered by it to Joseph B. Stewart, and the claim is probably worthless. The firm also had for collection before the dissolution a claim of Perry Fuller and Alexander McDonald against the United States for some sixty thousand dollars for supplies furnished to Indians; after prosecuting which for a time, by some arrangement between the claimant and the said Hughes, for reasons unknown to this respondent, Chipman, Hosmer & Co. were employed to prosecute it jointly with him; but the result was that it was prosecuted by them alone; that it was collected, and that no part of the fee was received by the firm. And the said Hughes, having, in 1866, borrowed two thousand ($2,000) dollars of the said Fuller, and given his note therefor, which is in the hands of the widow of the said Fuller, he refused to pay the same when payment was demanded of him; sometimes, as this respondent is informed, alleging that the said Fuller owed him, and sometimes that he owed the firm a larger sum than the amount of the note, for professional services; whereby, and as the said Fuller could not have owed him individually for legal services, he has compensated said note with a debt due the firm,

and became thereby released of it, the holder of the note abandoning all claims against him. In further answer to the allegations of this paragraph, this respondent states that according to the books of the firm, as kept by the said plaintiff, the several partners of said firm stood charged up to and on the first day of January, 1874, for money received by each for fees and commissions on collections, after deduction of all moneys paid by each towards expenses of the firm and otherwise, as follows:

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| The said James Hughes | $99,419 60 |
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| This respondent | 93,505 93 |

And, as appears by the books subsequently kept, and as has been ascertained and determined upon adjustment of accounts by the plaintiff and themselves, the said partners were chargeable up to and on the first day of February, 1874, for moneys received, less expenses and outlays, as follows:

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| The said James Hughes | $109,641 71 |
| The said James W. Denver | 111,622 84 |
| This respondent | 114,206 18 |

And the one-third of all net fees collected being $111,823.58, the balance in favor of said Hughes was $2,195.05. Since when the said Denver and this respondent are charged each, for net fees received over and above expenses of the firm paid by each and other moneys paid for it, $30,295.69. All which more fully appears by the accounts exhibited, taken from the books, with the answer of the said Denver, marked respectively J. W. D. No. 2, J. W. D. No. 3, and J. W. D. No. 4, and which are prayed to be taken as parts of this answer. No general cash account or expense account was kept by the said Roane in the books of the firm, and it is not necessary to state either, up to January, 1874. For a correct account of all cash received and paid out by the firm, and of expenses and outlays since January 1st, 1874, this respondent refers to Exhibits J. W. D. No. 5 and J. W. D. No. 6 of the answer of the said Denver, and prays that they may be taken as parts of this answer. And this respondent, further answering, says that such judgments were obtained as are in the said paragraphs mentioned by himself and the said Denver, without assistance from the said Hughes, long after the dissolution of the said partnership, as follows, that is to say:

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5th. And of John L. Hardee, March 31, 1873, for $103,856.86, on $15,000 whereof was no fee, and the fee paid was $22,214.21.

9th. To the allegations in the ninth paragraph of the said bill contained, this respondent answers and says, that the said Exhibit J. W. D. No. 1 sets forth and shows all the claims under the control of this respondent and the said Denver, maturing for hearing and embraced within the said agreement, or that were in the hands of said firm for collec-

tion, and that have not been finally rejected, and whether the said executor will be entitled to receive either one-third or one-fourth, or what part of the fees, this respondent will submit to the court upon the considerations hereinafter to be stated, and he and the said Denver are desirous to deal fairly and honestly by the executor, and to pay him whatever, under the circumstances, may equitably and justly be the part and portion of the said James Hughes in the fee in each of said cases, and to retain only what, in each, may in honor and conscience be their own.

10th. To the allegations in the tenth paragraph of the said bill contained, this respondent answers and says, that the Exhibits A.
61 R. 3, A. R. 4, A. R. 5, and A. R. 6 are true copies of letters addressed by the said plaintiff to the said Denver and himself (except A. R. No. 5, addressed to this respondent alone), of the several dates which the said copies bear; and that they led to an adjustment of the books, as shown by the accounts exhibited, with the answer of the said Denver, and taken therefrom, up to the 1st day of January, 1874; and that in consequence of the needs of the estate of the said Hughes, as represented by the plaintiff, the said Denver and this respondent gave him the sum of three thousand dollars on account, without admitting thereby his right as executor to any specific part of the fees in any case not finished when the said firm was dissolved on the 18th of March, 1869, nor waiving their right to contend that the agreement of August, 1869, was dependent on a condition on the part of the said Hughes that he had not kept or performed; and that if it ever took effect as to him it was abrogated when he acceded to the said Denver's demand that the business relations between them should cease. And he alleges that all the partnership relations have not, nor have any of them, been satisfied by the said Hughes, because from the time of said dissolution he greatly disregarded his obligations as a partner as to the chief business and almost all the business of the firm, and all his obligations as to the cases, claims, and business on which anything has been or is likely to be realized, no law having yet provided for refunding the cotton tax, and the success of the Belding claim, which he greatly neglected, being exceedingly doubtful, and his services in regard to both having been of little worth or avail; and from the time, in May, 1872, when he quarreled with the said Denver, and had thereafter no intercourse with him, he ceased also to have any with this respondent, and did not thereafter have any, in regard to managing or conducting the business of the firm.

62 11th. To the allegations contained in the eleventh paragraph of the said bill, this respondent answers and says, that it is true that he and the said Denver did and do deny that the said Hughes had any interest in the fee upon the said moneys so received by them from the said Gazaway B. Lamar, or upon the part thereof which belonged to the said Martin; and that they have refused and do still refuse to pay to the plaintiff any part of such fees; and that they have asserted and do continue to assert that the said James Hughes had in his lifetime abandoned the said case, had, on the 9th of January, 1873, filed in the Court of Claims a motion, and procured its allowance, asking leave to withdraw his appearance as an attorney in the case, had thereby, as to that case, severed himself from and retired from the firm, because he could not without doing so withdraw from the case if the firm still continued in it, and he would continue to do, if included in the firm as to that case, and he had never, after so withdrawing, rendered any service in that case, nor had any connection with it, nor ever, during his lifetime, claimed any interest in the fee. The Exhibit A. R. No. 8 of the bill contains a true abstract of the steps taken in that cause on and

after the 9th of January, 1873. And this respondent admits that the statements in the said paragraph contained, in regard to the making of the first paper copied in A. R. No. 7, and in regard to the erasures therein, and the additions thereto, and by whom it was written, erased, and added to, are true; that the first draft of it was written by this respondent, at the request and from the dictation of the said Hughes, and that the same, with the erasures and additions, is truly copied in the said exhibit. But the said Hughes made no use of that motion, but, on the contrary, filed the motion as it follows that, in the same exhibit, and as the same is exhibited with the answer of the said Denver, marked Exhibit J. W. D. No. 7, and prayed to be taken as part of this answer. And this respondent also prays that the authenticated copy of the same, and the exemplification of the record of its allowance,
63 exhibited with the answer of the said Denver, marked Exhibit J. W. D. No. 8, may be taken as part of this answer. This respondent knew nothing of the entry in the diary of the said Hughes, which the plaintiff alleges that the said Hughes caused him to make, and now knows nothing about it, except that the plaintiff states that it was so made, which this respondent does not deny, because if it was made he knew nothing about it, and it was a mere private memorandum made by the said Hughes by the hand of the plaintiff, that only shows what his own secret intentions were; and the respondent would rather not believe that while withdrawing altogether from the cause, severing as to it his connection with the firm, endeavoring to destroy the claim by denouncing it as a fraud and the claimant as a scoundrel, not only to indifferent persons, but to one of the judges who was to hear and adjudicate upon it, averring to him that he would not touch a dollar of the fee he secretly meant to provide for claiming, in case it should succeed, his interest in the fee as a partner, by making a private entry in his diary and preserving a motion that he never filed, and to share, if he could, what, according to his denunciation, would be the wages of iniquity, and so to put into his private purse a portion of moneys of which, according to his denunciation, Lamar was endeavoring to defraud and rob the United States; that, in short, he was too righteous and honest to help prosecute the claim, but not too much so to mean to claim part of the booty in case of success. And, further answering, he states that about the ninth of April, 1872, and for a few months thereafter, during the absence of this respondent, the said Hughes had pretended to take special charge of the said case of Lamar, in which certain cotton was also claimed that belonged to the said Martin, and was stored with Lamar and seized with his own cotton; for which cotton of Martin's a separate suit was pending in the name of James W. W. Taylor, administrator of
64 the estate of Robert Thompson, father of the wife of the said Martin, in which recovery could not be had, because no ownership in the said Thompson could be proved; and when he died, having assigned the claim to his daughter, Martin's wife, Martin, the real owner, could not recover because he had failed to bring his suit within the time prescribed by the statute; but the said Hughes, as this respondent is informed, neglected said Lamar's case, and avoided seeing him on that account; and being remonstrated with by Lamar, when they did meet, for his neglect of the case, they quarreled, and thereupon the said Hughes repaired to the office of this respondent, and there denounced the claim as fraudulent, and Lamar as a scoundrel; said he had taken so little interest in it because he had all the time believed it fraudulent; told this respondent that he would at once withdraw from the case, and urged him to do so likewise, proposing that they should

make Lamar pay them for what they had done, as otherwise they would never get anything, and saying that he meant to do so.

This respondent declined to withdraw from the case, saying that he had done too much work on it to give it up then; and at the request, and from the dictation of the said Hughes, wrote his motion to withdraw, which, as erased and added to, the plaintiff has exhibited; and when the said Hughes, on the 9th of January, 1873, took the motion which he substituted for that to the Hon. Ebenezer Peck, one of the judges of the Court of Claims, to have it allowed, he then and there, in the presence and hearing of the said judge, and to him, as this respondent is informed and believes, denounced the said Lamar as a scoundrel and the claim as fraudulent; and in reply to a question of the judge in regard to the fee, replied that he would not touch a dollar of it. Nor did he ever set up a claim to this respondent, or to the said Denver, for any part of it, whatever he may secretly have intended to do. At the time when he threw up his connection with the case, stigmatizing it as fraudulent, and by inference, and of course his partners as prose-
65 cuting it knowing it to be such, it was understood between the said Lamar and Hughes, Denver & Peck that the fee was to be contingent on success, but the precise percentage had not been agreed upon, and this respondent then stated to the said Hughes that he was unwilling to relinquish a large contingent fee for such a small sum in cash as the said Lamar would be able or willing to pay; but in reply said Hughes reiterated his determination to settle his claim against Lamar individually, leaving this respondent and said Denver to pursue such course as they saw fit. And after this the said Denver and this respondent with some difficulty effected an agreement with said Lamar, fixing the fee for their own service alone at ten per cent.; no part of which was agreed to be paid as a compensation for any service of the said Hughes, for whom they could claim nothing. For the part of the claim belonging to Martin (originally ten per cent.) the fee was finally fixed at thirty per cent., including the ten stipulated with Lamar on the amount of it.

As to the other cases mentioned in the said paragraph, and all other cases and claims remaining in the hands of this respondent and the said Denver unsettled, this respondent does not admit the claim of the plaintiff to one-third or one-fourth of the fees, but denies it, as the said Denver does, and claims that said agreement of August, 1869, was abrogated, even if the said Hughes had not forfeited his right under it from the beginning. In May, 1872, the dissatisfaction caused by the neglect of the business of the firm by the said Hughes culminated in a quarrel between him and the said Denver, commenced by the said Hughes in regard to the employment of the brother of the said Denver in the office, which resulted in the said Denver informing him by letter of 14th May, 1872, the copy whereof, exhibited with the said Denver's answer and marked Exhibit J. W. D. No. 9, is prayed to be taken as part of this answer, that the real cause of difference between them was the almost total neglect by him, the said Hughes, of the old
66 business of the firm, to which he as well as the said Denver was bound to give proper attention; and in his saying to the said Hughes, in conclusion, "After what has occurred it is time for us to separate; we can, as soon as M'r Peck gets back, divide our business fairly or get others to do it for us; but, however it may be done, I demand that the business relations between you and myself shall be definitely and finally closed at the earliest moment practicable." To which, on the 10th of June, 1872, the said Hughes replied by a letter, a copy

whereof is exhibited, with the answer of the said Denver, marked Exhibit J. W. D. No. 10, and which is prayed to be taken as part of this answer, in which he said that he presumed that the said Denver carefully considered the full scope and effect of his demand before making it; that he at once acceded to the demand; that no amicable negotiaions would suffice to close the business relations definitely and finally then existing between them; that he did not intend to conduct in person any business that might lead to a controversy with the said Denver, and would therefore put the business in the hands of counsel; that the said Denver need not wait for the appointment of such counsel, to follow up his demand by proper legal proceedings, "to close definitely and finally our business relations at the earliest moment practicable," and that he would afford every facility in his power to accomplish the purpose of the said Denver's demand, and he said, "in the mean time, as our firm is already formally dissolved, I beg leave to remind you that, except by courtesy, consent, or express authority, no single member is authorized to act for the firm."

No division of the business was ever made, nor were any legal proceedings instituted to that end, but from that time forward, until the death of the said Hughes, there was between him and the said Denver no intercourse or communication, but unfriendly relations, engendering bitterness and ending at length, shortly before the death of the said Hughes, in his preferring charges of professional misconduct against the said Denver, to the supreme court of the District of Columbia, in which charges he alleged that he did not enter into the said partnership with the expectation of attending to details; that it was expressly stipulated and expected that a great portion of his time would be spent in the West, and that he might keep open a law office in Indiana for the purpose of his private and professional business; that while in Washington he gave his attention to the general oversight and direction of the business; had entire charge of the cases in the Supreme Court, sometimes assisted this respondent in the Court of Claims, which branch of the business was, he stated, principally confided to this respondent; that, in general, litigated cases in the courts were under his, the said Hughes', immediate supervision, and he attended to a good deal of the department business, and to any other when his attention was specially called to it. Most of this statement was untrue. If the said Hughes entered into the said partnership with the expectation of not attending to details, he never made that expectation known to this respondent and the said Denver, otherwise than by the neglect of the business. The terms of the partnership were in all respects equal for all, and the firm was entitled to the services of the said Hughes as fully as it was entitled to those of the respondent and the said Denver. They were not his subordinates, nor was he the great man of the firm, the superior of his partners. He had not the general oversight and direction of the business; though at liberty to be at times absent from Washington, he had no more rights in that respect than his partners, and was not in the least at liberty to neglect the business of the firm in order to attend to his private affairs or practice.

67

And this respondent says that after the execution of the said agreements of March and August, 1869, the said Hughes did grossly neglect the business of the said firm in the said Court of Claims and elsewhere, not confiding the cases in that court to this respondent, but neglecting them, and giving them neither care nor supervision, the consequence being that the respondent was overworked and broken down, and in February, 1873, was compelled to retire for a time

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from work and travel for his health; the courts being then in session and our business pressing. Then the said Denver proposed to the said Hughes to divide the most pressing business in hand, and that each should give his attention where it was most needed; which the said Hughes agreed to, but did not do it, nor would at any time thereafter do it, though never absolutely refusing; and thus the whole business of the old firm was devolved on the said Denver by the neglect and failure of the said Hughes, from the time when the respondent became unable to work, although the said Hughes was then occupying rooms in the same building with the firm; while occupying which rooms from the early part of the year 1871 until June, 1873, he never passed one hour in the office of the firm, as this respondent is informed and believes; and this, although he had, in September, 1866, received of earnings of the firm nearly eleven thousand dollars more than either of his partners, and in October, 1872, nearly six thousand dollars more than either, and had for more than seven years largely overdrawn his account, never being less than $6,300 in excess of the said Denver, and never much less than that in excess of this respondent.

Wherefore this respondent insists that the condition presented in which it was agreed that if the said Hughes should die his estate should be entitled to one-third of the fees in cases nearly finished, and one-fourth in other cases, to wit, that he should attend as a partner ought to the business of the firm, and help to earn such fees, was wholly unperformed by him from the date of said agreements until his death, and his estate is entitled to nothing under said agreement of August, 1869, but only to such equitable share for previous service as the court or a jury shall determine; that the said Hughes, by his course toward the said Denver, wholly released him from any obligation to labor
69 for his emolument and profit, and to earn money by arduous labor and share it with him, as he released this respondent by abandoning the case, charge, and labor of the business of the firm; and that when the said Hughes acceded to the demand of the said Denver for a cessation of all business relations between them, that he wholly abrogated and abandoned the agreement of August, 1869, and gave both his former partners the right to decline to work for his benefit and profit during his lifetime, or for those of his estate after his death; and this respondent insists that, as the only capital invested in said firm was the ability, knowledge, and labor of the partners, the withdrawal of all these by one of the partners was a relinquishment of that agreement and of any right to share in the earnings of the others. And the greater the ability, learning, and capacity to direct and supervise of the said Hughes, so much the more should his withdrawal of all these lessen his claim to share in what he would not help to earn; and moreover, that enmity and hostile relations created between the said Hughes and the said Denver were inconsistent with and abrogated the agreement of March, 1869, its life depending upon the existence and continuance of such relations between them as would permit them to work harmoniously together as partners. And he further insists that the condition on which the estate of the said Hughes was to be entitled to one-third or one-fourth under said agreement, viz, that his partnership obligations should be faithfully complied with, never was kept by him, and the agreement never became effectual for any purpose whatever. And he prays that the part and proportion of the fees in the cases mentioned, and in others unsettled, may be determined by a jury.

12th. *In* the allegations contained in the 12th paragraph of the bill this respondent answers and says that the exhibits A. R. 9 and A. R.

10, mentioned therein, are true copies of letters addressed to this
70 respondent and the said Denver at their respective dates, and that no reply was made to either of them.

13th. To the allegations contained in the 13th paragraph of the said bill of complaint this respondent answers and says that he has already replied to what is therein stated, and that the plaintiff is not entitled to one-third of the fees therein mentioned, nor to one-fourth, but only to a much smaller portion thereof, and that from the one-third or one-fourth stipulated for in the agreement should equitably be deducted a sum in each case as large as the value of the services of the said Hughes were to have been thereon after the 18th of August, 1869.

14th. To the allegations contained in the 14th paragraph of the said bill this respondent answers and says that neither he nor the said Denver admits that the moneys therein mentioned are earnings of the co-partnership, but are their earnings alone, so far as they have been earned since the said partnership was dissolved; and they insist that if they themselves did the work in those and other cases which the said Hughes should have done, instead of employing some competent third person to do what he would not do, and paying them for such professional service and work out of the share of the said Hughes, as they had a right to do, they are themselves entitled to such pay for such work and service, to what they would so have become bound to pay, and to what the said Hughes forfeited by his abandonment of the business and virtual surrender of it to them after the partnership had been dissolved in March, 1869, and a new contract in writing substituted for it, under which they were not partners as to the unfinished business, but merely attorneys, jointly attending to the business, under a special contract for division of fees, with rights thereto dependent on attention and service, and forfeitable altogether by neglect and abandonment.

71 And as to the unsettled and unfinished business of the old firm, while this respondent is willing to pay to the said executor whatever the interest of the said Hughes therein may be determined to have been worth at the time of his death, under all the circumstances, he protests against being compelled to work for years for the benefit of the estate of one who, for a long time preceding his death, threw the whole business, with slight exceptions, upon the shoulders of him and the said Denver, and was almost as useless to the firm or his associate counsel as a dead limb is to a living tree.

Without that, that any other matter or thing in the said bill of complaint contained, material or necessary to be answered unto by this respondent, and not herein and hereby well and sufficiently answered unto, confessed, and avoided, traversed, or denied, as true, to the knowledge or belief of this respondent; and, having fully answered, he prays to be hereto dismissed with his costs.

PIKE & JOHNSON,
*Solicitors for Respondent.*

DISTRICT OF COLUMBIA, *City of Washington, ss:*

I, Charles F. Peck, do solemnly swear that I have heard read over the foregoing and annexed answer, and know the contents thereof, and the facts therein stated as of my own knowledge are true, and those stated on information and belief and information derived from others I do verily believe to be true; so help me God.

C. F. PECK.

Sworn and subscribed before me, June 2, 1874.

R. J. MEIGS, *Clerk.*

*Replication.—Filed June* 12, 1874.

Replication.

In the supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR, &C., *vs.* JAMES W. DENVER AND CHARLES F. PECK. } No. 3706. Equity doc. 13.

The plaintiff hereby joins issue with the defendants, and will hear the cause on bill and answer against the defendants and testimony and depositions to be filed.

JOS. H. BRADLEY, J'R,
*Plaintiff's Solicitor.*

72 *Depositions taken before the arbitrators and returned by them into court.*

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR OF JAMES HUGHES, *vs.* JAMES W. DENVER AND CHARLES F. PECK. } No. 3706. Eq. doc. 13. Filed July 7, 1874. —R. J. Meigs.

It is agreed by and between the parties to this suit that, excepting only the Gazsaway B. Lamar case, including therein the Martin case, all matters of business controversies set forth in the bill and answers be referred, under a rule of court, to two referees, one to be selected by the plaintiff and one by the defendants, with power to them to choose an umpire in case of disagreement; the finding of such referees, or the majority if an umpire is chosen, to be final, and be made a final decree of the supreme court of the District of Columbia.

It is also agreed that the causes to the Gassaway B. Lamar case, including the Martin case, be proceeded with regularly, as if this agreement were not made, each party to speed the cause to a final decree.

ARCHIBALD ROANE,
*Executor, &c.*
CHARLES F. PECK.
J. W. DENVER.

73 ARCHIBALD ROANE, EXECUTOR OF THE last will and testament of James Hughes, deceased, plaintiff, *vs.* CHARLES H. PECK AND JAMES W. DENVER, defendants. } No. 3706. Equity Docket 13.

This day came the said parties in person and file here their agreement in writing, signed by each. Filed in the cause this 7th day of July, 1874.

And it is thereupon, on the motion of the said parties, ordered by the court that as to so much of the case made by the said bill as relates to the claim and judgment of Gazaway B. Lamar *vs.* The United States, and the fees paid thereon, and to the claim of Martin or Thompson *vs.*

The United States, the amount whereof was included and recovered in the said judgment of the said Lamar and paid as part of the sum claimed by and adjudged to the said Lamar, and as to the fees paid thereon, this suit do proceed here to final decree as if no other matters of controversy were contained herein; and that all other matters and things, claims, and demands herein, set up by the said bill and answered unto by the defendants, be referred to two referees, one selected by the plaintiff and the other by the defendants, with power to them to choose an umpire in case of disagreement; and the said referees, or referees and umpire, shall take such testimony offered by the parties, and have power to decide all questions connected with such testimony; and shall, by their award, finally adjudge and determine all such matters of controversy between the parties; which award and adjudication of the referees, or of the majority of the three if an umpire is chosen, shall be in the last resort and final, without right of appeal or revision, and be made a final decree of the court here separately from the decree that may be rendered in regard to said claims of Lamar and Martin or Thompson.

By the court. A. W.

74 EXHIBITS.

*Statement of claim of A. Roane, executor of James Hughes, upon Messrs. Denver & Peck.*

I. Fees already collected and in hand in the following cases:

1. Battersby & Metcalf's executor.—Judgment of Court of Claims in favor of claimants, May 26, 1873, for $487,242.07; appealed by United States August 23, 1873; appeal dismissed April 8, 1874. Firm fee, 5 per cent., $24,362.10; one-third of fee, $8,120.70.

2. A. L. Tyler.—Judgment in favor of claimant, May 19, 1873, for $88,892.61; appealed by United States August 16, 1873; appeal dismissed April 17, 1874. Firm fee, 5 per cent., $4,444.61; one-third of fee, $1,481.53.

3. John L. Hardee, executor.—Judgment in favor of claimant, March 31, 1873, for $103,856.86; certified for payment April 3, 1873; motion for new trial by Attorney-General overruled April 22, 1874. Total fee, according to Denver & Peck's answers, $22,214.21; one-third of fee, $7,404.73.

*Recapitulation.*

| | |
|---|---|
| One-third fee in Battersby & Metcalf's executor | $8,120 70 |
| " " A. L. Tyler | 1,481 53 |
| " " John L. Hardee | 7,404 73 |
| | $17,006 96 |

Judge Hughes died on the 21st October, 1873. All the above fees were fully earned before his death. In the two first cases appeals were taken to the Supreme Court of the United States before his death, and the appeals dismissed through the services and influence of agents employed by Duncan, Sherman & Co., of New York, who owned large interests in the claims. In the third case judgment was rendered in the lifetime of Judge Hughes, but a motion for a new trial was made
75 by the Attorney General, which was not decided until subsequent

to his death. An adverse decision on this motion was made by the Court of Claims, and the money collected by Denver & Peck.

These cases were fully completed before the death of Judge Hughes, and if the appeals had been dismissed and the motion for a new trial overruled in his lifetime, his share (one-third) of the fees could not have been withheld from him. Is there any reason why this share should be withheld now from his representatives? Is not the obligation to pay it over even stronger?

Claim in these cases is made for one-third of the total fees, with interest from April 15, 1874, the date of demand for payment.

II. In January, 1873, an award was made by the British and American Commission in favor of John Haskins, an English subject, for $103,600.

The fee in this case is believed to be 25 per cent., and is payable in September, 1874, an appropriation having been made by Congress for this purpose. All that has been done in this case was done previous to the death of Judge Hughes, and his representatives are, therefore, entitled to one-third of the fee, whatever it may be.

III. In the following cases judgments were rendered in favor of the claimant, and were appealed to the Supreme Court of the United States previous to the death of Judge Hughes, and the cases are now pending in the Supreme Court upon appeal:

1. Samuel G. Cabell.—Judgment in favor of claimant, March 21, 1872, for $20,513.61; appealed by the United States June 24, 1873. Fee unknown, but believed to be 10 per cent.

2. The Home Insurance Company, of Savannah, Georgia.—Judgment in favor of claimant, June 3, 1873, for $37,529.58; appealed by United States August 30, 1873. Firm fee, 5 per cent.

3. The Southern Insurance Company of Savannah, Georgia.—Judgment in favor of claimant, June 2, 1873, for $27,134.15; appealed by the United States August 30, 1873. Firm fee, 5 per cent.

76 4. John L. Villalonga.—Judgment in favor of claimant, June 2, 1873, for $90,389.89; appealed by United States August 30, 1873. Firm fee, 5 per cent.

All the work which has been done in these cases was done previous to the death of Judge Hughes, and it is supposed that the appeals will be dismissed at the next term of the Supreme Court. Being cases finished or nearly finished, claim is made for one-third of the fees which may be realized from them, or any of them.

IV. In the following cases judgments were rendered in favor of the claimants by the Court of Claims subsequent to the death of Judge Hughes. They have been appealed to the Supreme Court:

1. Mary B. Habersham, executrix of Robert Habersham.—Judgment in favor of claimant, April 13, 1374, for $42,845.58; appealed by United States July 11, 1874. Firm fee, 5 per cent.

2. Alexander Collie.—Judgment in favor of claimant, May 15, 1874, for $950,076.71; appealed by United States June 30, 1874. Firm fee, 5 per cent.

In the above cases but little has been done by Denver and Peck since the death of Judge Hughes, as will appear from the transcript of entries from case docket of the Court of Claims, hereto appended. These cases have been pending for years, and having been nearly finished before his death, claim is made for one-third of the fees which may be realized from both or either of them.

V. The following cases were decided adversely in the Court of Claims,

but appeals have been taken to the Supreme Court of the United States:

| | |
|---|---|
| 1. Warren Hall, claim for | $18,769 50 |
| 2. Leonidas Haskell | 40,000 00 |
| 3. Whitesides & Co | 17,356 00 |
| 4. Comstock & McClelland | 14,611 76 |
| 5. C. A. Danolds | 28,326 75 |
| 6. Bishop & Westcott | 8,400 00 |
| 7. Warren Mitchell | 129,193 15 |

77 Claim is made for one-third of the fees in these cases if they should be gained in the Supreme Court, or of such of them as may be gained, most of them having been appealed previous to the death of Judge Hughes. In the Warren Mitchell case, under a contract with claimant, no further services are to be rendered by the firm of H., D. & Peck, and a lien for the full amount of their fee (33⅓ per cent.) has been adjudged in their favor by the Court of Claims.

VI. In the case of Eliza M. Dawson for $55,125, pending in the Southern Claims Commission, claim is made for one-third of the fee, most of the work having been performed previous to the death of Judge Hughes. In the case of Ella M. Guy for $23,774.50, and Earl D. Barden for $7,250, pending in the same commission, claim is made for one-fourth of the fees which may be realized.

VII. In the twenty-four cases enumerated in exhibit No. 1 to Denver's answer as still pending in the Court of Claims, some of which are for large amounts, and in some of which judgments will unquestionably be obtained, claim is made for one-fourth of the fees which may be realized.

VIII. In the Hot Springs case, pending in the Court of Claims, and the claim for the refunding of the cotton-tax pending in Congress, claim is made for one-fourth of the fees which may be realized by the firm of H., D. & Peck.

IX. In all other cases, whether enumerated or not, belonging to the old firm of Hughes, Denver & Peck, or which have been pending, and the fees not yet collected or divided, before any of the courts, before Congress, before the executive departments, before the various commissions for the settlement of claims, or before any other tribunal of any kind whatever, claim is made for one fourth of the fees which may be realized.

X. Claim is made for one-third of the amount which may be realized hereafter from outstanding debts due to the firm of Hughes, Denver & Peck, or from the sale or transfer of any property or claim of any description whatever belonging to the firm.

78 XI. That all firm fees hereafter, from whatever source realized, be divided as soon as collected; also amounts realized from debts due the firm of Hughes, Denver & Peck.

*Copies of entries from case docket, Court of Claims.*

United States Court of Claims.

ROBERT HABERSHAM } No. 2705.
*vs.*
THE UNITED STATES. }

March 5, 1873.—Clemt's brief filed.

October 16, 1873.—MSS. of record of court of ordinary of Chatham County, Georgia, filed.

Judge H. died October 21, 1873.
December 23, 1873.—Additional brief filed.
November 8, 1873.—Amended petition filed by leave of court.
November 10, 1873.—Printed copies of petition received, and five copies sent to Attorney-General.
March 3, 1874.—Submitted; defendant requested court to file findings.
March 11, 1874.—Certified copies of letters testamentary to Mary B. Habersham filed.
March 30, 1874.—Withdrawal of claim to 11 bales of cotton included in judgment to S. S. Boone filed.
April 2, 1874.—Finding by court filed.
April 13, 1874.—Chief Justice announced decision of court; judgment for claimant $42,845.58.
June 4, 1874.—Attested transcript of judgment issued to attorney of record.
July 11, 1874.—Application for appeal filed by defendants.

ALEXANDER COLLIE *vs.* THE UNITED STATES. } No. 2721.

April 24, 1873.—Return by commissioner of int. and cross-int. sent to American consul at London, with answer of Theod. Andrae, filed.
Judge H. died October 21, 1873.
December 16, 1873.—Brief for cl'm'ts filed.
March 30, 1874.—Argued and submitted; defendant requested court to file findings.
79 April 4, 1874.—Court filed findings.
April 6, 1874.—Defendant filed brief.
April 30, 1874.—Additional brief of claimant's attorney.
May 15, 1874.—Loring, J., read opinion of the court; judgment for claimant for $950,076.71. Nott, J., read dissenting opinion.
June 4, 1874.—Attested transcript of judgment issued to attorney of record.
June 30, 1874.—Application for appeal filed by defendants.

EXHIBIT A, A. R.

U. S. Court of Claims.

WM. BATTERSBY & METCALF'S EXECUTOR *vs.* THE UNITED STATES. } No. 2699.

In this case judgment was rendered in favor of the claimant, on the 26th day of May, 1873, for $487,242.07. Appealed by United States August 23, 1873; appeal dismissed April 8th, 1874.

ALFRED L. TYLER *vs.* THE UNITED STATES. } No. 2717.

In this case judgment was rendered in favor of claimant, May 19th, 1873, for $88,892.31. Appealed by United States August 16, 1873; appeal dismissed April 17th, 1874.

JOHN L. HARDEE
*vs.*
THE UNITED STATES. } No. 2893.

In this case judgment was rendered in favor of claimant, March 31, 1873, for $103,856.85; certified for payment April 3, 1873; motion of Attorney-General for new trial overruled April 22, 1874.

CLERK'S OFFICE, COURT OF CLAIMS.

I hereby certify that the foregoing are correct extracts from the records of the Court of Claims.

80 In testimony whereof I have hereunto set my hand and affixed the seal of the court this 17th day of July, 1874.

[SEAL.] ARCHIBALD HOPKINS,
*Chief Clerk Court of Claims.*

EXHIBIT A, C. F. P.

WASHINGTON, D. C., *January* 14, 1874.

Received of J. W. Denver and Charles F. Peck, as surviving partners of the late firm of Hughes, Denver & Peck, the sum of one thousand dollars, in the check of C. F. Peck on Riggs & Co., the same being on account of fees received by said Denver & Peck in cases of the late firm.

A. ROANE,
*Executor of James Hughes, deceased.*

EXHIBIT B, C. F. P.

WASHINGTON, D. C., *January* 19, 1874.

Received of J. W. Denver and Charles F. Peck, as surviving partners of the late firm of Hughes, Denver & Peck, the sum of two thousand dollars, in the check of C. F. Peck on Riggs & Co., the same being on account of fees received by Denver & Peck in cases of the late firm. One of said checks is drawn in favor of W. S. Cox, and the other to me.

A. ROANE, *Executor.*

EXHIBIT C, C. F. P.

OFFICE OF JAMES HUGHES, 458 LOUISIANA AVENUE,
*Washington, D. C.*

Received of C. F. Peck two hundred dollars, which he is authorized to retain out of Judge Hughes's share of the first moneys which may come in hand, and charge the same to estate of Judge Hughes—the said $200 having been advanced by C. F. Peck soon after death of Judge Hughes to pay necessary expenses.

January 24, 1874.

A. ROANE, *Executor.*

81 EXHIBIT A, J. W. D.

| | | |
|---|---|---|
| $1,577 | 97 | Elizabeth Abrams, judgment April 3, 1872. |
| 22,439 | 20 | W'm B. Adams, judgment March 4, 1872. |
| 6,026 | 54 | George W. Anderson, ditto. |
| 44,610 | 81 | Abraham Backer, do. |

12,974 42 Daniel H. Baldwin, April 8, 1872.
7,880 86 Battersby & Cohen, May 26, 1873.
487,242 07 Battersby & Metcalf ($487,242.07), ditto.
87,013 67 Battersby, William, May 26, 1873.
876 65 Brigham, Baldwin & Co., June 2, 1873.
4,733 91 Luke Christie, March 4, 1872. May 8, 1872.
107,126 63 Henry Cobia, February 10, 1873.
10,784 75 Octavius Cohen, ditto.
950,076 71 Alexander Collie, May 15, 1874.
6,570 38 John M. Cooper, March 3, 1873.
Cross & Co., still pending.
67,258 23 John S. Daniels, March 4, 1872.
Joel Dean & Co., still pending.
11,880 79 Dewitt & Morgan, April 8, 1872.
W'm H. Dickerson, still pending.
6,136 55 John A. Douglas, March 3, 1873.
58,384 89 Freeman estate, April 17, 1872.
1,402 64 James Foley, March 11, 1872.
154,554 89 Charles Green, May 26, 1873.
3,013 22 Alec A. Gordon, March 3, 1873.
Rob't Habersham, est., April 13, 1874.
16,393 79 John F. Hamilton, March 11, 1872.
695 37 Henry D. Headman, March 3, 1873.
72,853 98 Harry Haym, March 11, 1872.
40,747 83 C. W. H. Heinsius, May 19, 1873.
3,506 60 Hunter & Gammell, March 3, 1873.
3,506 60 W'm Hunter, April 8, 1872.
37,695 95 Charles Hill, June 5, 1873.
Henry Lafone, still pending.
701 32 W'm Lattimore, May 8, 1872.
5,610 56 D. & E. S. Lathrop, May 19, 1873.
9,039 81 J. W. Lathrop & Co., April 15, 1867.
1,803 81 W'm Lindon, May 13, 1872.
3,940 43 And. Low & W'm Battersby, May 26, 1873.
474,685 89 Andrew Low, April 27, 1872.
6,736 80 Edward Lovell, May 8, 1872.
82 5,557 05 Lovell and Lattimore, ditto.
525 99 Catherine McDermott, April 14, 1873.
31,033 41 Marshall, Beach & Co., May 19, 1873.
14,72. 72 T. B. Marshall & Co., March 11, 1872.
3,155 94 Annie M. O'Neill, April 15, 1872.
George Patten, still pending.
10,519 80 Mary Reilly, April 8, 1872.
19,006 78 Richmond & Wilmot, April 29, 1872.
1,970 21 Margaret Richards, March 3, 1873.
7,889 85 John S. Rogers, March 3, 1873.
3,172 22 Virginia Sheftall, March 3, 1873.
1,928 63 John Stevenson, April 15, 1872.
35,529 58 The Home Insurance Co., appealed to Sup. Ct. June 2, 1873.
27,176 15 The Southern Insurance Co., appealed to Sup. Co. June 2, 1873.
88,892 31 A. L. Tyler, May 19, 1873.
90,389 89 J. L. Villalonga, appealed June 2, 1873.
2,629 95 J. J. Waring, April 8, 1872.
8,941 83 Alberter T. C. Wetter, June 5, 1873.

4,032 59 Charles Wilson & others, May 5, 1873.
15,969 16 John R. Wilder, April 22, 1872.
17,883 66 Aaron Wilbur, ditto.
4,200 00 Gustav A. Wirth, February 11, 1872.
103,856 86 M. A. Hardee, ex., March 31, 1873.
20,513 61 S. G. Cabell, ditto.
5,891 99 Wm. Markham (returned to docket April 15, 1872), February 24, 1873.
92,598 40 Wm. W. Coues, May 26, 1863.
4,375 00 James Hunter May 31, 1873.
3,352 32 Emma P. Sykes, April 21, 1873.
14,193 00 J. N. Cartwright, June 4, 1873.
4,055 00 Leon Lipman, ditto.
6,044 50 E. Cohn, arg'd and sub'ed April 10, j'dg't April 10, 1872.
2,317 90 L. DeGive, arg'd and sub'ed April 3, judg't April 22, 1872.

Alfred Anstell, argued and submitted April 10, 1872. Judgment May 8, 1872, for $12,385.88. No appeal.

83 Emma P. Sykes, argued and submitted April 2, 1872. No decision. Married to Pollock Barbor October 30, 1872. Again argued and submitted February 13, 1873. Judgment April 21 for $3,352.32.

Charles H. Adams. Judgment March 1, 1872, for $2,080. Had been argued and submitted long before. Wrote would appeal; appeal never perfected. Had to give up fee for the neglect.

Kentucky Agricultural and Mechanical Company. Before War Department and Congress. Appropriation at last session $25,000. No fee; yet contested.

Asher Ayres. Argued and submitted February 9, 1869. Judgment March 22 for $35,011.68. Appealed, and motion for new trial; new trial granted February 28, 1870. April 18, appeal dismissed. Second judgment in Court of Claims April 15, 1872, for $36,643.97.

John B. Braun. Lost by limitation of time. Wm. M. Derby, administrator, &c. Still pending.

John Hill. Adverse decision.

John Haskins. Claim for about $50,000; presented May 28, 1866. Rejected by Claims Commission, and this decision approved by Secretary of War July 31, 1867.

Got the claim before the department again, and, December 13, 1867, received decision of War Department refusing to allow it.

Efforts were made in 1868 and 1869 to get it up again, but without success. It was then abandoned until the treaty was made with Great Britain, when it was turned over to A. St. C. Denver to prosecute. He made up a new claim for over $211,000, attended to it alone, done all the work, and got an award for $103,600.

Ex. B, J. W. D.

In B. and A. Mixed Commission.

William Battersby.
John K. and Edward Cross.
William Dean & Co.
David and Thomas Harrison.
Tipper & Taylor.
Ernest Dronke,
William Keith.
84 John Haskins.
John C. Forbes.
John McLennan.
Alexander Collie et al.
Stephen Watson.
Charles Myers.
R. W. Inman.
Henry Lafone.
Nelson McStea.
Charles Hill et al.
Charles Green.

Ex. B, A. R.

*Agreement of settlement—Hughes, Denver & Peck with A. St. C. Denver.*

This agreement, made this 5th day of August, A. D. 1869, between James Hughes, James W. Denver, and Charles F. Peck, late partners under the firm name of Hughes, Denver & Peck, of the first part, and Arthur St. Clair Denver, of the second part, witnesseth:

That the parties of the first part agree to account to the party of the second part for the one-half part of all the fees which they have received or may receive hereafter from the cases in their hands, a list of which is hereto annexed and marked A, after deducting the actual expenses attending the same; also for one-fourth of the fees which they shall receive from the list of cases marked B, after deducting expenses in like manner.

And the party of the second part agrees that he will render such assistance in the prosecution of all such cases as may be required of him by the parties of the first part.

2d. And the party of the second part agrees that the interests in the fees hereinbefore enumerated shall be received by him in full satisfaction of all claims upon the parties of the first part for services rendered them, and also for all services which he may hereafter render to said firm of Hughes, Denver & Peck in closing up their business. The case of C. A. Perry & Co. in said list B to be subject to a certain condition noted thereon.

JAMES HUGHES. [SEAL.]
C. F. PECK. [SEAL.]
A. ST. C. DENVER. [SEAL.]

85 This agreement is not to affect a former agreement, or the interests therein specified, made between Hughes, Denver & Peck and Denver & Turk, dated May 12, 1869.

JAMES HUGHES. [SEAL.]
C. F. PECK. [SEAL.]
A. S'T C. DENVER. [SEAL.]

*List A referred to in the foregoing agreement. Cases closed up.*

| | |
|---|---|
| Wright & McKissick | $10 00 |
| Rhoda Goode | 8 60 |
| Sarah Autry | 20 00 |
| " " | 15 00 |
| McMillan, land warrant | 12 00 |
| Alfred C. Matthewson | 20 00 |
| M'r's Holland | 4 00 |
| S. H. Ingersoll | 10 00 |
| Mary Ann Mers | 4 80 |
| Elam & Howes | 65 24 |
| William Craig | 415 10 |
| Archer Hart et al | 77 24 |
| T. C. Sweeney | 3 28 |
| Searcy & Son | 5 00 |
| Sophie Warren | 42 54 |
| Cal. S't Nav. Co. | 147 39 |
| N. D. Kintz | 10 00 |
| Nannie Favor | 357 00 |
| S. T. Suit | 454 96 |

| | |
|---|---|
| Gabriel Roane | 10 00 |
| Eustis Jefferson | 10 00 |
| M'r's McLain | 25 00 |
| Miles Gibson vs. W'm Henry | 25 00 |
| | 1,752 15 |

*List A continued. Cases now pending.*

| | | |
|---|---|---|
| Fanny Yarborough | | Bounty, &c. |
| Caroline Cottingham | | Do. |
| James S. Wise | | Transportation account. |
| Nancy C. Martin | | Bounty, &c. |
| A. B. Ayers | | Timber, &c. |
| | Polly Russell | Pension. |
| 86 | Mary A. Finnerty | Bounty. |
| | J. N. Irwin | Demurrage. |
| T. C. Sweeny | | Contract. |
| N. Nichols vs. C. Schlak | | $100 due. |
| John King | | $13.50 due. |
| L. E. Pradent | | $25 due. |
| Sampson Wright | | Vouchers. |
| Mary and A. T. La Vallette | | Rent. |
| George W. Spencer | | Pay account. |
| W'm Craig | | Hay. |
| J. P. Haywood | | Damage to schooner. |
| Samuel Ensworth et al | | Rent and repairs. |
| Martha M. Washer | | Pension. |
| Richard Atkinson | | Rent. |
| Maria McIntyre | | Pension, &c. |
| James L. Andrus | | Vouchers. |
| George Ayer | | Pension. |
| David Simpson | | Vouchers. |
| Martha C. McCullough | | Pension, &c. |
| Jacob Hatchet | | Bounty. |
| McClelland & Comstock | | Cotton tax. |
| Hicks King, (St'r Des Arc.) | | Contract. |
| S. L Scruggs | | Medical ac't. |
| J. W. Harris | | Do. |
| C. B. Phillips | | Rent. |
| Sally Phillips | | $25 due. |

*List B.*

Montandon vouchers.
K'y Ag. & Mech. Ass.
Brandies & Crawford ..... Corn lost.
Iliff & Stevens.
C. A. Perry & Co., provided the amount recovered shall exceed $50,000.
Halliday Brothers.
James F. Quin.
John Hill.

JAMES HUGHES. [SEAL.]
C. F. PECK. [SEAL.]
A. ST C. DENVER. [SEAL.]

87 Ex. C, A. R.

*Agreement between H., D. and P. and Turk and Denver, and between F., Turk and A. S't C. Denver, May 22, 1869.*

On an adjustment and settlement of business heretofore existing and growing out of a proposition made by Frank Turk and A. S't C. Denver to the firm of Hughes, Denver & Peck, dated May 1st, 1867, it is hereby stipulated and agreed by the several parties to the said proposition and agreement of that date that the following division of fees shall be made in the cases mentioned, to wit:

In the case of M. A. Dauphin, in the Court of Claims, Hughes, Denver & Peck are to receive one-half the fees, A. S't C. Denver one-fourth, and Frank Turk one-fourth. In case of Hughes & Fuller, lately pending in said Court of Claims, Hughes, Denver & Peck one-half (½) of the fee, A. S't C. Denver one-quarter, and Frank Turk one-quarter. In the case of Gover & Gardner, in the Court of Claims, Hughes, Denver & Peck one-half the fee, A. S't C. Denver one-fourth, and Frank Turk one-fourth. In the case of E. La Plante, in the Court of Claims, Hughes, Denver & Peck one-half and A. S't C. Denver one-half of the fee received. In the case of N. McStea, entered on the books of said firm, Hughes, Denver & Peck one-half of said fee and Frank Turk one-half. In the case of H. D. Cooke, where a fee is due for services in the matter of a claim by R. M. Price against said Cooke, the firm of Hughes, Denver & Peck are to receive one-half of said fee, after deducting expenses, and Frank Turk the remaining one-half. In the case of W. B. Comstock, in the War Department (claims commission), Mr. Turk is to have charge of the case and to receive all fees growing out of the same. In the several cases of M. A. P. Yorke, S. A. E. Russell, John S. Patton, and the steamer Allen Collier, the firm of Hughes, Denver & Peck are to receive one-half of all fees, A. S't C. Denver one-fourth, and Frank Turk one-fourth of the same. In all the foregoing cases it is understood and agreed that the several parties are to pay their share of the expenses in the exact proportion of their share in the fees. And it is expressly stipulated that this agreement shall operate as a full and final adjustment of all the matters of business herein mentioned, and that all others not mentioned herein shall be forever barred. And this agreement
88 is to be taken and understood as a complete and final settlement between the firm of Hughes, Denver & Peck, of the one part, and of the firm of Denver & Turk of the other part, and also in complete and final settlement between the said A. S't C. Denver and Frank Turk, late constituting the firm of Denver & Turk.

Witness our hands and seals this 12th day of May, A. D. 1869.

JAMES HUGHES. [SEAL.]
J. W. DENVER. [SEAL.]
C. F. PECK. [SEAL.]
FRANK TURK. [SEAL.]
A. S'T C. DENVER. [SEAL.]

[Revenue stamp.]

This agreement not to release the amount due from Frank Turk and A. S't C. Denver, as shown by the books of Hughes, Denver & Peck to to be due them.

FRANK TURK. [SEAL.]
A. S'T C. DENVER. [SEAL.]
HUGHES, DENVER & PECK.

EXHIBIT C, J. W. D.

*Cases of the firm of Hughes, Denver & Peck, or of any member thereof, which have been appealed to the Supreme Court of the United States, and of the result of the decisions thereon.*

December term, 1867.

Ex parte McCardle. Trumbell & Hughes. Denied motion. 6th Wall., 318.

White vs. Cannon. Hughes, Denver & Peck. Affirmed. 6th Wall., 443.

Kail et al. vs. Wetmore. C. F. Peck. Dismissed. 6th Wall., 451.

Kail et al. vs. Douglas. C. F. Peck. Dismissed. 6th Wall., 451.

Clark vs. United States. Hughes & McCalla. Reversed. 6th Wall., 543.

89 Ins. Co. vs. Halleck. Hughes, Denver & Peck. Affirmed. 6th Wall., 561.

United States vs. Alire. Hughes, Denver, Peck, & Watts. Remanded. 6th Wall., 573.

December term, 1868.

Riddlesbarger vs. Hart. Ins. Co. Hughes. Affirmed. 7 Wall., 33,

United States vs. Speed. C. F. Peck. Affirmed (I think). 8 Wall., 77.

December term, 1869.

Drehman vs. Stifle. Hughes & Moody. Affirmed. 8 Wall., 595.

United States vs. Ayers. Hughes. Appeal dismissed. 9 Wall., 608.

United States vs. Adams. Hughes. On motion. 9 Wall., 661.

Texas vs. Chiles. Hughes. Motion denied. 10 Wall., 127.

Braun vs. Sauerwein. Brent, Crittenden, & Hughes. Affirmed. 10 Wall., 219.

December term, 1870.

McVeigh vs. United States. Curtiss, Brent, Wattles, Moore, Hughes, Denver, & Peck. Reversed. 11 Wall., 259.

T. G. W. Crussell. Hughes. "Continuance granted." 12 Wall., 175.

United States vs. Burns. Carpenter, Hughes, Denver & Peck. Affirmed. 12 Wall., 246.

December term, 1871.

United States vs. Crussell. Hughes, Denver & Peck. Affirmed. 14 Wall., 1.

December term, 1872.

Maddox vs. United States. Hughes, Curtiss. Affirmed. 15 Wall., 58.

Sweeny vs. United States. Hughes. Affirmed. 17 Wall., 175.

Allen et al. vs. United States. Hughes. Affirmed. 17 Wall., 207.

90 Hume vs. Beale. Hughes, Moore. Affirmed. 17 Wall., 336.

*Testimony of Archibald Roane.*

WASHINGTON, D. C. *August* 26, 1874.

ARCHIBALD ROANE, EXECUTOR OF JAMES Hughes, deceased, *vs.* DENVER & PECK. } 3706. Eq. docket 13.

Before the arbitrators, Hon. Joseph Casey and Col. A. A. Hosmer.

Present, the complainant, with his attorney, Hon. S. S. Henkle, and the defendants, with their attorney, Hon. Albert Pike.

Mr. Roane presents a statement of his understanding of the rights and merits of his case, and of what he conceives to be the whole ground of controversy between himself, as the executor of Judge Hughes, and General Denver and Mr. Peck, with the exception of the Lamar case. He presents it as a statement—not as pleadings or evidence.

(Statement filed and marked *.)

ARCHIBALD ROANE sworn.

Examined by M'r Henkle:

Q. Where do you reside?

A. In Georgetown, D. C.

Q. Will you state whether you had any connection with the old firm of Hughes, Denver & Co; and, if so, what that connection was?

A. The firm of Hughes, Denver & Peck, as I understand it, was organized in 1865. I came on from Richmond, in the fall of that year, and they had a case before them which was referred to them by the Treasury Department, and my services were called into requisition, having been chief of the produce loan office of the Confederate Government. I had information in regard to the case; especial information.

Q. That was in the fall of 1865?

A. Yes, sir; I had daily communication with them for several months with regard to that case, except during the time I went south to get the testimony of M'r Thenholm and M'r Memminger. But I only got
91 M'r Thenholm's. I was only absent about ten days or two weeks and returned, and was in daily communication with the firm until April, 1866, when I was employed by Judge Hughes to assist him individually. I remained with Judge Hughes until the fall of that year when I proposed that I should be taken into the service of the firm of Hughes, Denver & Co., which was accordingly done, with the consent of all the parties.

By Mr. PIKE. In the fall of what year?

A. 1866; I was taken into the service of the firm in 1866.

Mr. HENKLE. How, as clerk of the firm?

A. Yes, sir; I was acting as clerk of the firm. But while I was with Judge Hughes I performed duties connected with the firm. Cases that he had under charge.

Q. You assisted him in the preparation of cases?

A. Yes, sir; when I went into the service of the firm I was engaged, principally at first, in assisting in the preparation of papers for the departments. Afterwards, in 1867, I think, am not certain about the date exactly, Mr. Peck had had charge of the account books of the firm up to about October, 1867, I think, and I relieved Mr. Peck of that labor, and took charge of the account books myself, and at the same time

assisted the firm generally in correspondence, the preparation of briefs before the department, and helped Mr. Peck in the preparation of briefs before the Court of Claims; and generally engaged in the business of the firm. The firm was dissolved in March, 1869.

Q. Did you continue in that capacity until the dissolution?

A. O, yes, sir; and subsequently I continued in the service of the firm, but I think in about the month of June or July of that year formed a partnership with Judge Hughes. Under the articles of dissolution each member of the firm had the right to take new cases for himself. I was in partnership with Judge Hughes, but at the same time I remained in the service of the firm. The office of the firm was removed from G street to Pennsylvania avenue, and Judge Hughes removed to the Alexander building.

By Mr. PIKE. Can you give the precise dates of those removals?

A. No, sir; I cannot. I can by reference to papers, but I cannot just now. I think it was about July, 1869. Judge Hughes removed about the same time, or a little before, to what is known as the Alexander building. It is over Alexander's upholstering establishment. He
92 had a private office there, and I spent my time between the firm office, a few doors further down on the same street, and Judge Hughes's private office, still performing my duties connected with the firm. I think—I do not remember exactly the date—but I think in 1868 my salary was reduced, and it was understood I was to have charge only of account books of the firm; no other business except business connected with the accounts. Those were all of my obligations to the firm, although I rendered a great deal of service for the firm in cases Judge Hughes had charge of.

Mr. HENKLE. After the dissolution of the firm, or after you ceased to be connected with the firm, you associated with Judge Hughes in business?

A. Yes, sir; with Judge Hughes and the firm at the same time, and——

Q. You continued to be with Judge Hughes until his death?

A. Yes, sir; I will state further about that; I was with the firm, and with Judge Hughes, also, and I rendered considerable service belonging to the firm business at the same time for Judge Hughes. I did a great deal of the business that he ought probably to have performed. Judge Hughes gave up his office over Alexander's building, and removed into the rooms over the firm office.

Q. When was that?

A. In May, 1870, Mr. Middleton, Judge Hughes, myself, then formed a partnership under the name and style of James Hughes & Co. James Hughes, Mr. Middleton, and myself, we had offices over the firm office. Then I still maintained my connection with the firm, going below to the firm office whenever it was necessary. I had the account books of the firm in my rooms above; they were in the third story; the firm occupied the rooms in the second story, and we occupied the rooms of the third story. There was constant communication between the two offices. I remained in charge of the books, I think, until October or November, 1872, when a difference took place between General Denver and myself, and I gave up the books.

Q. Did your connection with the firm then cease?

A. After I gave up the books my connection with the firm ceased, but I still remained in partnership with Judge Hughes. We occupied the rooms above until June, 1873, when we removed to the office
93 that we now occupy, 458 Louisiana avenue. During the whole

of this time I had daily communication and conversations with Judge Hughes about the business of the firm—even after my connection with it was severed.

Q. You remained his partner until he died?

A. I remained in partnership with him up to the day of his death, October 21st, 1873. I make this full statement to show why I am acquainted with the affairs of the firm of Hughes, Denver & Peck from almost the organization of the firm up to the time of Judge Hughes' death. I had been in this intimate connection and relation with him.

Q. Now, you have referred to a dissolution of the copartnership of Hughes, Denver & Peck; when did that take place? Have you a copy of the article?

A. Yes, sir; I have the original here, which I will herewith submit.

WITNESS. Then I would say that the third article of dissolution expressly provides——

Mr. PIKE. I object to that; the paper shows for itself.

Mr. HENKLE. You can state any fact.

A. Well, they remained as a firm as to all cases then on hand.

(Objected to by M'r Peck on the ground that witness should not argue the case.)

Q. What relation do you sustain to the estate of Judge Hughes?

A. I am the executor. Letters testamentary were issued to me on the 28th of October, 1873.

Q. State whether since the death of Judge Hughes there has been any settlement of the firm matters between you, as the executor, and the surviving members of the firm. If there has been, state all about it.

A. Yes, sir.

Mr. PIKE. That is all in evidence.

WITNESS. I think on the 15th of December I proposed a settlement, and enclosed to them a copy of a contract which had been made for the division of fees, and that letter which constitutes the contract—which I claim constitutes the contract—is already in among the pleadings. I suppose it is proper for me to make some explanation of that; the letter was written on August 13th, 1869, and Denver's endorsement was August 18th, 1869.

94 Q. You have that written statement which you partially read; if you please, will you state to the arbitrators such facts as are claimed by you to be material to the case. You understand as well as any of us such things and such facts as are material to the case, and which are not either admitted or denied by the answer. It is not necessary to prove what is admitted by the answer.

A. I do not know that; I cannot remember every fact. I think that it is necessary for me to give a statement with regard to this contract for the division of fees. The contract is among the exhibits, and shows for itself. There are some explanations that are required. General Denver made the endorsement—"I agree to this with the express understanding that all the partnership obligations shall first be satisfied before any such division can be made at any time." Now, I want to give an explanation of the cotemporaneous matters, so as to show what that meant.

M'r PIKE. We have no objection to the witness making the statement, but if any testimony is taken which ought not to be considered the arbitrators will not consider it, of course.

WITNESS. I will state that at the time this letter was written, according to the books of the firm of Hughes, Denver & Peck, Judge Hughes was several thousand dollars in excess of each of his partners in the

drawing of money from the firm; and also that General Denver was the holder of a note of $7,000—a note of the firm of $7,000, which he had taken up and paid—and that the partnership obligations, spoken of in his endorsement, referred to these pecuniary obligations.

M'r PIKE. Do you swear that?

A. I swear that was my belief at the time.

Q. What was General Denver's understanding?

A. I do not know anything about General Denver's understanding. I will swear that General Denver never said to me that his understanding was otherwise. He never said anything to me on the subject at all until recently, I believe; and that is the plain meaning, I think, of these facts—that Judge Hughes had overdrawn his account, and that General Denver held the firm's obligation of $7,000.

M'r HENKLE. Where was that letter to General Denver sent to?

A. It was sent to Wilmington, Ohio, and was received by
95 Judge Hughes in due course of mail, and returned by General Denver, and received in due course of mail, and handed by Judge Hughes to me, and filed away among his papers.

Q. State how it was subsequently treated in the transactions between the members of the firm. What I mean is whether it was treated as a contract—as fixing the terms?

A. I will state that, immediately after my appointment as executor, I addressed a letter to Messrs. Denver & Peck, and enclosed a copy of this paper to them; and, shortly afterwards, on not receiving a reply, I addressed another letter on the same subject, which are exhibited in my bill, I believe—these two letters. In December, I think, General Denver went to Ohio and M'r Peck was called to Chicago. Before they went, as I understood, authority was left with M'r A. S't Clair Denver and myself to settle up and adjust on their part all the business between Judge Hughes and the firm of Hughes, Denver & Peck. We accordingly had a meeting and had a full adjustment of all the outstanding matters, so far as we understood them—everything. This adjustment was submitted to General Denver and M'r Peck after their return. A payment was made to me of one-third of the amount then on hand from fees recently collected, after deducting amounts to equalize Judge Hughes' account. Paying a compromise in the Hunton suit; paying a judgment of John S. Williams; paying a draft of Witkowski; paying a printing bill of $500—leaving a small amount for current expenses. After making all these deductions there were about $9,000 left, and $3,000 were paid over to me, being one-third of the amount according to the estimate.

Q. What did that settlement embrace?

A. It embraced all the outstanding claims; all the points of difference, as I understood it, between Judge Hughes and the house of Denver & Peck, and squared up the overdraw, as it was called, of Judge Hughes, and paid all the firm's debts, so far as they were known at that time.

Q. From the beginning of the firm up to that time?

A. Yes, sir; a complete squaring up of all accounts, as I understood it, up to the first of January. $18,000 had been recently collected by them and it took about $9,000 to square up. The $9,000 that remained was divided equally, leaving a balance for current expenses. Nothing was said at the time to me about its being a settlement on account; never heard such a thing. It was understood by me that it was
96 a settlement under this contract. Nothing was said about waiv-

ing or not waiving any rights, and it was understood by me to be a settlement under this contract, a copy of which I had sent to them.

M'r PECK. We object to the last expression, about "understood."

WITNESS. I want to make some further remarks. I never heard from any source whatever, until April, when further collections were made, that the contract was denied by any party. I heard it then for the first time from General Denver. He then stated to me, when I made a demand for a division of fees, which, at that time, had been collected, that his endorsement was a conditional one, which Judge Hughes had never accepted. I have frequently had conversations with M'r Peck on the subject, and he has said to me, the expression he used was that he was willing to live up to the contract. He recognized it and was willing to live up to it. Those were his exact words—not then only, but frequently on previous occasions; and that he only deferred to General Denver because he raised points about it, I having demanded of M'r Peck that if he recognized it he should pay over his half.

Q. How did Judge Hughes regard or treat this endorsement of General Denver upon the letter?

A. Judge Hughes never said a word to me about it.

Q. State whether he accepted it or not.

A. He handed it to me to file among his papers. He never said a word to me one way or the other. He simply handed it to me to file it away among his papers.

Q. State whether he treated it as a contract.

A. That is the inference.

M'r PECK. State any facts.

A. He handed it to me to file away, and my inference was he treated it as a contract.

Q. When was the first time you heard from M'r Peck as to his interpretation of the contract?

A. During M'r Peck's absence in Europe, on account of ill health, his brother-in-law, M'r Holbrook, came to me and got a copy of the contract, it then being supposed, as M'r Peck was ill, that he probably was the member of the firm who would first need the benefits of it, and I furnished the copy to M'r Holbrook during M'r Peck's absence in Europe.

Q. When was that?

97 A. I think that was in 1871 or 1872.

Mr. PECK. It was in 1872.

Q. Was Mr. Holbrook representing Mr. Peck during his absence?

A. He was his brother in law. He was living at his house. I do not think he had any power of attorney from him. I think his father had a power of attorney. I had a power of attorney from Mr. Peck for certain purposes, and his father had one for certain purposes.

Q. When did you first learn from General Denver that he gave to that endorsement the interpretation which he claims?

A. Not until April of this year, after the fees in the Battersbee, Tyler, and, I think, Hardee and other cases had been collected.

Mr. CASEY, (arbitrator.) Exhibits show?

A. Yes, sir. I never heard of any objections to the contract from General Denver until that time.

Mr. HENKLE. I believe the exhibits show what fees were collected after Judge Hughes' death?

Judge CASEY. Yes, they show the date of the collections, and the answers show the amount.

Mr. HENKLE. When did Judge Hughes die?

A. October 21st, 1873, from disease of the heart.

Q. What was the condition of Judge Hughes' health a few years before he died?

A. It was very bad for two years previous to his death. In 1872 he was threatened with paralysis. There was permanent drooping of the upper lid of the left eye, and for a great portion of the summer of 1872 he was incapacitated from reading or writing, and I performed for him the office of an amanuensis very frequently. I went out to his place two or three times a week and wrote letters for him—sometimes from his dictation, and sometimes he signed letters that I prepared. He was during the greater part of that summer utterly incapable of performing any services either for himself or for anybody else.

Mr. PECK. That was the summer preceding his death?

A. Yes, sir; in 1872, when he was threatened with paralysis. He died in October, 1873. I am speaking of the summer previous to his death. When cool weather came on his health rallied, and he was able to attend to business at intervals, but not continuously. He was liable to frequent attacks, and had them. In 1873, early in the year, I
98 think he was, so far as I know, taken with the symptoms of heart disease, and was confined to his bed sometimes two or three days at a time. Then he would apparently recover, and then he would have another attack, and these attacks became more and more frequent until October, 1873, when he died. During the last three months of his life he spent the greater part of his time in bed. He made only two or three visits to Washington, I think, during those three months, that I know of. He was, however, sometimes able to attend to business, but was liable to be attacked at any time, and was frequently attacked while he was attending to business.

Q. Will you state whether while he was in health he gave as much attention to business as it required, or as his health admitted of?

A. I cannot say that Judge Hughes performed all the duties connected with his business that he could have performed. I do not pretend to say that he did. I know, however, that his health was very bad during both of those years—1872, 1873; and that he was an invalid during those years, while he had intervals in which he could attend to business.

Mr. CASEY, (arbitrator.) The two last years of his life?

*Q.* Yes, sir.

Mr. HENKLE. What do you know about the compromise of the suit of Chadwick for the use of Hunton, against Denver & Peck?

A. I know I assented to the compromise and wrote a letter to Mr. Peck stating the condition upon which I assented to it; and that condition was——

Mr. PECK. Let the letter speak for itself.

A. Very well; let the letter be filed.

I say Mr. Hunton, of New Orleans, brought a suit against the firm of Hughes, Denver & Peck for one-half of the fee realized in the case of Edward Laplante, the fee being about $28,000. "Chadwick for the use of Hunton," is the name of the case. It is a suit for one half of the amount. Judge Hughes, for reasons satisfactory to himself, preferred not to join with General Denver and Mr. Peck in a defense, and employed Mr. Mattingly to represent him, Gen. Denver and Mr. Peck employed Mr. Durant. He had other matters connected with the case which they had not. Therefore their interests were considered separate.

In June, 1873, the case came up. Judge Hughes went over with
99 his counsel. He intended himself to appear, as well as Mr. Mattingly, and to make a statement, but the attorney for Mr. Hunton received a telegram from him to continue the case, and the case was

continued. It did not come up again until after the death of Judge Hughes. Just before it came up, Mr. Peck came to me and stated that proposals for compromise had been made, either by himself or Mr. Chadwick, who was then here, and he proposed to compromise the suit by the payment of $4,500 to Messrs. Chadwick and Hunton; and from the peculiar attitude of Judge Hughes in the case it was necessary to have my consent. I gave my consent, verbally first, and afterwards reconsidered the matter, and told Mr. Peck I would put it in writing, and accordingly I wrote him a letter, which is among the Exhibits, making it conditional.

Mr. PIKE. Do not state anything about the contents of it, if it is here. I have never seen it:

WITNESS. We can read it now. Here is a copy of it:

DECEMBER, 1873.

C. F. PECK, Esq.:

DEAR SIR: As an executor of Judge Hughes, I will give my consent to the compromise proposed by you in the suit of Chadwick for the use of Hunton, against the firm of Hughes, Denver & Peck, with the understanding that after settling this and the other outstanding ascertained debts of the firm, and of Judge Hughes' individual indebtedness to it [we had not our adjustment at that time] that the balance of Judge Hughes' share of the recent collections shall be turned over to me, and that without further delay, and that future collections of the firm shall be divided at once after the deduction of expenses, and debts hereafter ascertained. [Judge Hughes' share of the recent collections was turned over to me in January, and I made this further condition:] Future collections of the firm shall be divided at once, after deducting expenses and debts hereafter ascertained. Please submit this to the general.

I claim that it constitutes a supplementary contract. It is marked "Exhibit No. 5."

Q. Was that letter accepted by Mr. Peck?

A. I will say the compromise was made. I received no answer to the letter; none was necessary. The compromise, however, was made, and they acted upon it, took advantage of my consent,
100 and it became a contract, and by the refusal to divide, or by the neglect, or whatever you may call it, to divide the recent fees, I considered the recent contract has been violated. It was an additional contract to all others that were made previously.

Mr. HENKLE. Now, the gravamen of this case, it seems to me, is what is there in the objection that is set up by the surviving members of the firm to the division which you claim of the fees to the estate of Judge Hughes?

Q. I want you to go on and state the facts in regard to Judge Hughes' attention to the business generally.

A. I have stated that during the last two years of his life Judge Hughes was incapable from his physical condition of attending closely to business, but during that period he did attend to cases in the Supreme Court. There were some ten or a dozen of them. What is known as the "Hot Springs case." It was in the Supreme Court. Not directly the case that was before the Court of Claims, but upon some of the principles involved. There was a case, I know, in which he spent several weeks in the preparation of a brief. That was a chancery case, involving somewhat the principles of the Hot Springs case. That was a case of the firm of Hughes, Denver & Peck. That particular case was not, nor was it the case of Judge Hughes. He never received any

pay for it; nor did he expect to; but it involved the principle lying at the bottom of the Hot Springs case. It was a branch of the case. He spent a great deal of time over that. He was a good deal engaged in the "cotton-tax claim"—a claim for the funding of the cotton tax. A great many matters came up, and they required a considerable degree of his attention. I think there were some eight or ten cases in the Supreme Court which he argued.

Q. Can you name some of them?

A. One was the Sweeney case, one was the Smith; one the Maddox case, and one was the Street and Allen case, and various others. But I cannot call them to mind just at this moment. Those were prepared and argued by him in the Supreme Court within the last two years preceding his death. I do not know but the Silvy and Crussell cases came within that time, and the Burns case, all of which he argued. It might have been a little before that.

Q. The dissolution of this firm was in March, 1869, was it not?

A. Yes, sir.

101 Q. What was the state of preparation of the business that the firm had on hand up to that time?

A. Their cases were in various stages; from every stage from commencement up to the last, I believe you may say. These cases that I have enumerated, for instance, here under my first head in this statement I have presented, were all old cases of the firm of Hughes, Denver & Peck.

Q. Can you state how far they were advanced in their preparations for trial?

A. I cannot state how far they were advanced in their preparation for trial. I can say that the statement I here make is taken from the records of the Court of Claims, as to the time and amount of the judgement and when, and the dismissal of the appeal, &c.

M'r PECK. Have you any objection to admitting my case-book, which is a transcript of the records of the court; subject, of course, to any errors which may be found existing; transcript of the docket entries of the Court of Claims? I kept a copy and have it in my office.

A. I do not know that I have. I have here a certified copy with regard to these first three cases.

Q. Have you in regard to all these cases in regard to which you make a claim?

A. No, sir. I testify that they came from the record.

M'r PIKE. It is not admissible at all. The record is the only thing that is admissible.

A. I will put in a certificate that the foregoing is a correct extract from the record of the Court of Claims, so far as relates to the first three cases.

(Paper introduced in evidence, made a part hereof, and marked Ex. No. 1, A. R.)

By M'r Henkle:

After the dissolution of the firm, state whether Judge Hughes continued to give attention to the unfinished business of that firm, or whether he abandoned it.

A. He never abandoned the business.

Q. Did he consult with clients when they came to see him in regard to it?

A. Yes, sir; he did.

Q. And he took an interest in the prosecution of it?

A. Yes, sir.

Q. Did he give such attention as a lawyer ordinarily in his condition of life gives to his business?

A. I could not say precisely what attention Judge Hughes
102 ought to have given, and whether he gave as much as he ought to have given; I only know his health was very bad.

Q. I spoke of that because that is the issue distinctly made in the answer.

A. I could not swear that Judge Hughes gave as much attention as a lawyer ordinarily does, because the habits of lawyers are different in that matter. Some lawyers give more attention to business than others do.

Q. I do not think it is a matter that is material, but it is made here.

A. Judge Hughes did receive clients, and he did talk about the business of the firm.

Q. He never relinquished his interest in any case?

A. No, sir.

Q. Now I suppose it is a proper question, in view of the case as it is made in this answer, especially, and perhaps in the bill too. You claim in the bill that the major part of the business came to Judge Hughes; or that his reputation and position as a lawyer attracted it?

A. Yes; I think so.

Q. That is denied in the answer.

A. I think that the greater portion of the business was drawn to the firm on account of the reputation of Judge Hughes. He had held a great many positions; he had been judge in Indiana, a judge of the Court of Claims, and a member of Congress.

(Objected to by Mr Peck as being irrelevant and immaterial. Question waived.)

*Cross examination.*

Cross-examined by Mr Pike:

This firm was dissolved on the 18th of March, 1869. From the time when the dissolution was agreed upon, March 18, 1869, up to the 13th of August, 1869, did Judge Hughes give his share of attention to the business of the firm during that period—from March, 1869, to August, 1869?

A. I think he did; I do not remember specifically; I think he gave the share of attention that he had been in the habit of giving to the firm business.

Q. You moved to Alexander's rooms in July, 1869; from the time he took those rooms over Alexander's, in July, 1869, up to the time
103 when he moved to the rooms over the firm office, in May, 1870, just state, if you please, whether he attended to the business of the firm during that time, or during the time that he had a separate office up to May, 1870; did he go to the firm office and pay attention to the business there at all?

A. I do not know that he attended regularly at the firm office; I know that he was in almost daily communication with General Denver, not so much with Mr. Peck; I know that he had papers relating to firm cases at his office. The work that he did was principally at his own private office; that is to say, the office work, in firm cases, that he did was done at his own private office; it was not done in the firm's office. I know that he did receive the clients of the firm in his own private office. I do not know that he frequently visited the firm office, but I know that he was in constant communication with General Denver and frequent communication with Mr. Peck.

Q. What portion of the business did he attend to in the courts during that time; did he attend to the Court of Claims?

A. Of course I cannot answer specifically in regard to that. I know that he in the mean time attended to a great many cases in the Court of Claims. I know that he attended to the Eslava & Aubert cases.

I know that that was one of the earliest of these southern cases; and most of the principles were then new; and that he argued them very elaborately. The speech of Judge Hughes was printed at the expense of the firm, and very extensively circulated.

Q. In what year was that?

A. That I do not remember.

Q. In what year was that?

A. I do not know.

Q. It was before the dissolution?

A. Yes, sir, I suppose it was; I do not know.

Q. I simply speak about that time, between July, 1869, and May, 1870.

A. I cannot tell what particular cases he attended to in the Court of Claims. I know that he occasionally went to the Court of Claims and assisted Mr. Peck. I know that in the beginning he gave a great deal of attention to the cases in the Court of Claims; afterwards, it fell into the hands of Mr. Peck, without any particular agreement as to
104 the division of duties; but most of the Court of Claims cases fell into the hands of Mr. Peck, and it was expected he would attend to them.

Q. What time was that?

A. I do not think that the Court of Claims cases commenced until 1867 or 1868; Mr. Peck had very little to do previous to that time; most of the business was in the departments and in Congress previously.

Q. Who attended to it in 1870?

A. Mr. Peck.

Q. Did Judge Hughes attend the Court of Claims at all in 1870?

A. I do not know; indeed, I cannot remember whether he assisted in a single case; I know he attended to the Maddox case; I cannot remember when that came up.

Mr. PECK. I think that was possibly in the year——

Q. In 1871 did he attend to the business in the Court of Claims?

A. I do not remember any cases; he gave some attention.

Q. He took rooms away from the office in May, 1870?

A. Yes, sir.

Q. He staid there until when?

A. June, 1873; he removed June 9th, 1873, to the office we now occupy, from the firm offices.

Q. You speak of the firm offices; do you mean the firm offices on Pennsylvania avenue?

A. Yes, sir; the firm of James Hughes & Co., consisting of Judge Hughes, Mr. Middleton, and myself, occupied rooms over the firm offices of Hughes, Denver & Peck, and were in constant communication; they occupied the second story, and we occupied the third story rooms.

Q. After that letter was written with regard to the amount to be paid to any member of the firm who might die—that was in August, 1869—do you know of any other business of the firm that Judge Hughes attended to, except cases in the Supreme Court and the "Hot Spring case," and the cotton-tax matter?

A. Yes, sir; he gave some attention to the Warren Mitchell case. I

remember that and all the work I did in the case. It was very considerable. Of course, Judge Hughes is entitled to it. I was doing it for him. It was not my own duty as employee of the firm to render
105 any services in that case at all. There were also cases attended to—the case of Mrs. Nutt—the case was largely attended to by Mr. Middleton before the Southern Claims Commission—and the Mrs. Dawson's case. Judge Hughes is entitled to the credit of it, for we did it for him. It was the firm business. What I did was for Judge Hughes.

Q. What was done in the Warren Mitchell case?

A. Nearly all the testimony was taken. The instructions were given to the agent at Savannah, and also with regard to taking testimony. There was a constant correspondence with him, and with Warren Mitchell. The brief was prepared by me, and Judge Hughes, besides, went to Harrisburg to take testimony of Governor Geary. There was some testimony taken in the Warren Mitchell case several moths previously in Louisville, which was not by Judge Hughes, or under the direction of Judge Hughes or myself, but much of the testimony was so taken.

Q. You were a partner of Judge Hughes in 1872 and 1873?

A. Yes, sir; from 1869.

Q. Until he was confined so that he could not get up or down, did he not attend to the business of the firm?

A. No more than he did to the business of the old firm of Hughes, Denver & Peck.

Q. During those two years?

A. Yes, sir; there was omission to attend to the business; you may call it neglect; I do not call it neglect; the business of that firm, as well as that of the other, with regard to the attention he gave to the business, I would say, making allowance for the state of his health, that he gave pretty much the same attention as he had previously; pretty much the same sort of attention he gave before the firm was dissolved. Making allowance for his failing health, I do not know that it was quite as much, but pretty much the same. There was considerable allowance within the last two years to be made on account of his health. There was very little done in the last two years.

Q. Did he show the same interest in the business of the firm during the last two years? Was he alienated from the firm?

A. He and General Denver had a quarrel, and he and Mr. Peck were not on very good terms, and of course as to the "personal" of
106 the firm he did not show the same interest. He had an interest in the fees, and of course he felt an interest in the business.

Mr. CASEY (arbitrator). State in that connection, as that fact has come up, whether the other members of the firm came to him and consulted with him about the business, or whether they assumed to carry it on without consulting him about it.

A. I would say that Gen. Denver consulted until the time of the quarrel—consulted with Judge Hughes. They were very intimate and friendly, and consulted as to the business. I have heard them frequently in my own presence. They were very often together, and talked over the firm business. I have heard it talked over between them hundreds of times. Mr. Peck never was in the habit much of consulting with unless when requested specially.

Mr. PECK. You do not mean to testify that I had any quarrel with Judge Hughes?

A. No, sir; I do not.

Mr. HENKLE. Q. Are you speaking of the time of the dissolution of the firm?

WITNESS. Up to the time of the quarrel with General Denver.

Q. When was that?

A. That was in May, 1872, I believe.

Q. Up to that time General Denver and Judge Hughes were in constant communication in regard to the business of the firm?

A. Yes, sir. I suppose while they were both here they were in almost daily communication with each other; social communication and business communication.

Q. Now, I understand the fact to be that for a long time before the dissolution of the firm, as a matter of fact, Mr. Peck had almost exclusively managed the business of the Court of Claims?

A. Yes, sir. Even before the dissolution and after the dissolution, and up to the present day, Mr. Peck has been the principal manager of the cases in the Court of Claims.

Q. Generally tried the cases in the Court of Claims?

A. Yes, sir; he has had the principal direction and management without any specific agreement as to that falling to his share.

Q. How long before the dissolution of the firm did Mr. Peck take charge of the business before the Court of Claims?

107 A. I cannot say how long. When the Court of Claims business matured he commenced practising in the courts. When I first went into the firm he was engaged in the preparation of the cases for the courts, but the cases had not come on for argument; he was engaged in the prepartion of the cases. The business of the firm for which they realized most money was the department business at that time. Judge Hughes and General Denver attended to that. Mr. Peck took no part, or very little, in it at all, as I remember. He was engaged in the preparation of the cases for the Court of Claims. They did not come on for argument till probably a year afterwards.

*Proceedings before the arbitrators in the case of Roane, ex'r, vs. Denver & Peck.*

Testimony of Charles F. Peck.

WASHINGTON, D. C., *August* 27, 1874.

The arbitrators met, pursuant to adjournment. Present, all the parties to the suit, with their respective counsel.

The examination of witnesses was proceeded with as follows:

CHARLES F. PECK, sworn.

Examined by M'r Pike:

Q. M'r Peck, you are familiar with all the facts in this case. Suppose you just go on and state them in your own way?

A. Very well, I will do so, and will first take up the statement submitted by M'r Roane, yesterday, as the statement of the matters upon which he relies. First, as to the Battersby & Metcalf executor case, it appears that the fee in that case has actually been collected. The same is true of the Tyler case; and also of the case of Hardee, executor.

Q. Did these cases go to the Supreme Court?

A. They were all three appealed to the Supreme Court, I think, and the appeal was afterwards dismissed in each case excepting the Hardee. In the Hardee case, a motion for a new trial was entered, and the mo-

tion for a new trial was finally overruled. The date here is given as April 27, 1874.

108 Q. When were they decided in the Court of Claims, respectively?

A. I presume the dates here are correct. The case of Battersby and Metcalf was decided May 20, 1873; it was appealed in August '73, and dismissed in April, 1874.

Q. Who attended to the Battersby case in the Court of Claims?

A. I attended to it in the Court of Claims, up to the time I was taken ill. I wish to say that about February—I think early in February—I could not give the exact date—early in February, 1872, I was taken ill very suddenly, and was from that time, for a long time afterwards, absolutely prohibited from attending to any business.

Q. For about how long?

A. For all that spring.

Q. Who attended to it after you were taken ill?

A. I will state in that connection that about the time I was taken sick, it had been arranged that I should go to Europe to take testimony, and to attend to some other matters in relation to the cases of Duncan, Sherman & Co. And it was considered that my illness, perhaps, would not interfere with my attending to that business, because the trip to Europe would perhaps be of such benefit to me that I would be restored by the time I reached there. This case was one of the cases. I did not actually sail until the 12th of March, 1872; but I had been sick a month, I should think, or more, before I sailed. When I reached Liverpool, I did attend to the matters which I had expected to attend to before my illness. They involved the visiting of a number of places and the procuring of certificates, and conferring with clients and a variety of matters of that kind, it being then expected that this case would be tried before the English Mixed Commission, and my duties in connection with cases over there had relation to that commission rather than to the Court of Claims. During the time I was in Europe, I attended to this business; but of course I was not attending to it all the time; about one-half of the time I was there I was so occupied. Returned on July 1st, 1872, having sailed on the 12th of March But after my return, when I returned, the courts, I think, had all adjourned. The summer vacation was on, and I went on my summer vacation as usual, and did not do very much that summer.

Q. Was that case in the Court of Claims then?

109 A. That case appears to have been decided on May 26, 1873.

Q. When was it brought into the Court of Claims?

A. Several years before that; it was pending in the Court of Claims then.

Q. It was in the Court of Claims when you went away?

A. Yes, sir; and I had attended to it up to that time; but there was a hiatus in my attention.

Q. Who attended to it during that hiatus?

A. I believe General Denver; I have always so understood from all the parties concerned. I, of course, was in Europe, and had not that personal knowledge, but I so understood from all parties concerned.

Q. Who after that?

A. The general and I attended to them jointly. They ran along together, but the general gave more attention to this case than I did.

Q. How much attention did Judge Hughes give it?

A. I never knew of his giving any attention to it; I might say I did not know of his ever having done so.

Q. Go on with the next case.

A. The next was the case of A. L. Tyler.

Q. Who attended to that?

A. I attended to that up to the time I went to Europe, and the facts are the same in regard to that case as in the Battersby and Metcalf case.

Q. Then the next?

A. John L. Hardee, executor. In that case judgment was rendered in April, 1873.

Mr. HOSMER (arbitrator). Allow me to suggest in regard to this; you started with a recapitulation of the cases, when filed, and the action taken in each. It would simplify the matter if in each of these cases you would do the same and not require us, if any examination is necessary, to run from one printed list to the written list.

WITNESS. John L. Hardee, executor. His case I attended to strictly, except during my absence and illness, and I think that when I resumed business again I took rather special charge of that Hardee case—rather more than the general did. That is my recollection of it, although he had something to do with it.

Q. That also was in the Court of Claims?

A. That also was in the Court of Claims.

110 Q. Did Judge Hughes attend to that or any other case before it?

A. I never knew of Judge Hughes having done anything about that case.

Q. The one before it; what was that?

A. The Tyler case was the one before it.

Q. Or that either?

A. Or the Tyler case either; it went to the Supreme Court and was dismissed.

Q. The last one of the three did not go to the Supreme Court. A motion was made for a new trial; the others went to the Supreme Court, and the Attorney-General abandoned his appeal in the first two cases, the Battersby and Metcalf cases, and the Tyler case.

Q. Did Judge Hughes give them any attention in the Supreme Court?

A. Judge Hughes was dead, I think, when they went to the Supreme Court; no; yes; the first one was appealed August 23, and he died in October; I never heard of his giving them any attention there, and I presume he did not; it was hardly possible that he did.

Q. They were dismissed without argument?

A. Yes, sir. The Attorney-General abandoned the appeal; they were not reached.

Q. Go on with the next case.

A. That is equally true of the Battersby and Metcalf and Tyler cases.

Q. But the Hardee case was not appealed?

A. The Hardee case was not appealed, but a motion for a new trial was made.

Q. Who made it?

A. The Attorney-General.

Q. Was it argued?

A. Yes, sir.

Q. Do you know who argued it?

A. Yes, sir; I was trying to think how much of an argument was made in it; I cannot recollect the points about the argument; but it was argued and argued by me, I am quite sure; I had the entire and exclusive charge of it.

Q. What became of the motion?
A. The motion was overruled.
Q. What do you mean was argued?
A. The motion for a new trial was argued.
111 Q. And the motion was overruled?
A. Yes, sir.
Mr. HENKLE. And no appeal taken?
WITNESS. In that case there was a great number of affidavits upon each motion for a new trial. I wish to state these facts in reference to the position assumed by M'r Roane; that is, if the points of law were decided in his favor, he would be unquestionably entitled under the agreement, supposing the agreement to be established, and all the points of law established in his favor, he would be entitled to one-third of the fees in the Hardee case, because it was substantially finished. I wish to state to the court that there was a vast deal of labor involved in that motion for a new trial—more than there was in the original preparation of the case even; for a great many affidavits had to be prepared. I was assisted in that by Gen. Denver, and, I think, to some extent, by M'r Arthur Denver, a part of the time, I being away. But the motion for a new trial was an extremely troublesome one; involving more labor and more trouble really than the original preparation of the case.
Q. What time was that argued? Is the date of the overruling there at all?
A. It was overruled April 22, 1874. I think it was argued perhaps a couple of weeks before that.
Q. It was decided in August, 1873?
A. It was decided in March, 1873.
Q. Is the date of the motion for a new trial given there?
A. No, sir; but it must have been given within three months after that.
Q. In the summer of 1873, then?
A. I will tell you the facts about that case. I was trying to recollect them. That was a case where the Attorney-General allowed the ninety days to expire, and did not take any appeal. He did not file any motion for a new trial. He let the ninety days run out, and then went to the Secretary of the Treasury and alleged that he could prove fraud—according to the words of the statute, "fraud, wrong, and injustice to the United States," and asked the Secretary not to pay the money. The Secretary arbitrarily, and without any authority of law whatever, just put his foot down and said he would not pay it. I do not know that the Secretary pretended that he had any legal excuse for not paying the money, but I know he would not pay it; and then the Attorney-
112 General took the affidavits of some man, who almost immediately, the next day, went to Europe—one Tu Nno—and while he was over in Europe, it was alleged, was shipwrecked on the coast of Norway. Of course I knew nothing about that, and I could not get them to go ahead or do anything. We held many interviews with the Secretary of the Treasury, and with the Attorney-General, and with the Attorney-General's assistants, and the result of such interviews was that numerous affidavits were taken in Savannah and elsewhere.
Q. By the government?
A. Yes, sir; by the government and also by ourselves. We had to impeach Tu Nno, to show that he was an unreliable witness. I suppose we got thirty affidavits of leading citizens of Savannah impeaching him. Finally, Tu Nno himself appeared, after a long lapse of time, and then the Attorney-General pursued rather an unusual course. He proceeded

to take depositions in the case, instead of taking affidavits. And what with the affidavits he had taken and the affidavits we procured, and the depositions we took, on the motion for a new trial, the labor was really more arduous than what was done upon the original trial. But, finally, we got hold of certain records, &c., that entirely destroyed the grounds upon which the motion was based, and it was overruled.

Q. That was entirely attended to by you and General Denver?

A. Yes, sir; I think Mr. Arthur Denver during my absence.

Mr. ROANE. That was after the death of Judge Hughes?

A. Most of it was after the death of Judge Hughes. The judgment was rendered in Judge Hughes' lifetime, and would have been paid in his lifetime but for this arbitrary act of the Secretary of the Treasury, which led to all the subsequent trouble. The Attorney-General did finally file his motion for a new trial, but he filed it long after the 90 days had expired. He relied upon the power of the government; he knew and we knew that we never could get paid until that motion was dissolved. When it was dissolved the money was paid.

Q. What is the next case?

A. I see M'r Roane states here that Judge Hughes died on the 21st of October, 1873. He goes on: "All the above fees were fully earned
113 before his death. In the two first cases appeals were taken to the Supreme Court of the United States before his death, and the appeals dismissed through the services and influence of agents employed by Duncan, Sherman & Co., of New York, who owned large interests in the claims." As to these two appeals being dismissed, they were dismissed without any other great labor on our part; but we, of course, held interviews with the Attorney-General, and used all such exertions as attorneys ought to do in the matter of procuring the dismissal of the appeal, but there were no proceedings in the court that amounted to anything.

Mr. ROANE. But the statement is substantially correct that it was done through the services of agents employed by Duncan, Sherman & Co.?

WITNESS. Duncan, Sherman & Co. had their lawyers there, and endeavored to do, and did, their best to co-operate with us. I do not mean it was done without our aid and co-operation.

Mr. ROANE. They paid their own agents?

A. Yes, sir; we did not pay any expenses connected with it; at least, I believe not; I never heard of any.

Mr. PIKE. What was the fee in that case? Only five per cent.?

A. Yes, sir; of the Duncan, Sherman & Co. it was five per cent., but in this Hardee case it was much more.

Q. What was that fee?

A. One-third—a large fee.

Gen. DENVER. No, it was 25 per cent.

WITNESS. You are right about that.

M'r PIKE. Proceed to the next.

WITNESS. I think that in that case there was a claim made by our client that he had incurred large expenses in Savannah, which he thought, in justice, we ought to contribute towards, and we knew he had incurred expenses; and I think we did to some extent contribute. The total fee was $22,000.

The second class of cases is the case of John Haskins, an English subject. The Mixed Commission made an award in his favor of $103,600.

Q. The British and American Commission?

A. Yes, sir; Mr. Roane says that the fee in this case is believed to be 25 per cent. Well, I am advised it is only 10 per cent.

114 M'r ROANE. That was the original fee when it was before the War Department. I think you stated, in a little memorandum I have, that it was 25 per cent.; I asked you what the fee was, and you gave me the memorandum.

WITNESS. I have no knowledge on the subject, but I do not admit it is; my information is that it was less, and I wish to state two facts in connection with that. M'r Roane says: "In 1873 an award was made by the British and American Commission."

M'r ROANE. That is correct, is it not?

A. Yes, sir; I presume it is correct.

M'r ROANE. I got the information from the exhibit; from General Denver's answer.

M'r PIKE. It does not appear there what time the proceedings were instituted before the commission?

A. No, sir; they must have been instituted during Judge Hughes' lifetime; I think they were only allowed to stay about twelve months.

Q. I want to know what time M'r Arther Denver commenced to look at it.

A. That I cannot answer; I only know he was at work at the case for several months, off and on, because I saw him and saw the papers, and, so far as I know, he did all the work, I might say, before that commission, that is, I did not help him; I never heard of Judge Hughes and Gen. Denver except as the general may have had a general run of these cases; he may have understood them incidentally.

M'r ROANE. M'r Arthur Denver's relations with the case, so far as I know, were confined to the commission, not referred to the War Department.

WITNESS. I now pass to class three. In the statement of M'r Roane, he says: "In the following cases judgments were rendered in favor of the claimants, and were appealed to the Supreme Court of the United States previous to the death of Judge Hughes, and the cases are now in the Supreme Court upon appeal." That statement I believe to be correct. The cases were decided and the judgment rendered in favor of the claimants during the lifetime of Judge Hughes, and they have been appealed and are now pending.

Q. What is the first one?

A. The first one is Samuel G. Cabell; judgment in favor of claimant, March 31st, 1873, for $20,513.

Q. Who attended to that?

115 A. I attended to that case, with the exception that I have before noted, up to the time of my illness.

Q. Who attended to it during the time you were ill?

A. During the time I was ill I understand that General Denver attended to it; but I have no further knowledge on the subject. After my return from Europe General Denver and I attended to the cases jointly. I guess the general gave rather more attention to that case than I did.

M'r ROANE. Was there any attention required?

WITNESS. Oh, yes, sir.

M'r PIKE. What I want to know is who attended to each case and how far Judge Hughes did attend to such.

A. All right. I will just go through it. The Home Insurance Company of Savannah, Ga. That is one of the Duncan, Sherman & Co's cases, and the next one, the Southern Insurance Company, of Savannah,

is a sister case. They are exactly alike, substantially the same as the Villalonga case.

Q. Did I understand you to say that the "Cabell" was of the same class?

A. The same general class, but there were some distinctions. These two insurance cases are appealed to the Supreme Court of the United States. Every effort has been made to procure a dismissal of the appeal. The questions involve certain propositions of law which will have to be tried there. We have gone on in the expectation that they would be dismissed. We have exhausted all our resources to procure their dismissal, but the Attorney-General seems determined upon trying them. They involve certain legal questions. Of course we think we are right—lawyers always do; but they are questions that will require very careful consideration, and very thorough argument in the Supreme Court.

Q. They have been argued in the Supreme Court?

A. No, sir; they have not been, and it is doubtful whether they will be reached this present term.

Q. Who attended to that in the Court of Claims?

A. I attended to that in the Court of Claims, up to the time I was taken sick, and after my return from Europe, General Denver and I have jointly attended to all these cases. I have no information of Judge Hughes' ever rendering any services in connection with them. The Villalonga is in the same class, and in many respects, in all re-
116 spects, the same, excepting the questions in the Supreme Court are of a different character. The question is that of a factor. M'r Villalonga did not own all of this cotton; only owned about half of it, and held the rest of it as factor, and the court below allowed us to recover the whole value. During my absence the arrangement was entered into between General Denver and Judge Hughes on the one part, and M'r Arthur Denver here on the other side, by which M'r Denver was to receive one-fourth of the fee in that case—share equally, that is, in that case—in consideration of services he should render. I know that he rendered the services in preparing the case: of course, I have no personal knowledge of that contract, but if that contract existed, why, one-fourth was due him.

M'r ROANE. Who made the contract?

A. It was made, as I was informed, by Judge Hughes and General Denver, acting on the one part, and M'r Arthur Denver on the other.

M'r HENKLE. We object to that as evidence if you have no knowledge of that yourself.

WITNESS. Very well; I stated it rather by way of information than as evidence.

M'r PIKE. If you got it from Judge Hughes you can state it.

WITNESS. I got it from Judge Hughes and from M'r Arthur Denver. Judge Hughes told me he had made such an arrangement with M'r Arthur Denver, but he said that he had afterwards revoked the agreement.

M'r ROANE. How soon?

WITNESS. He was a little mixed about that; he said very soon afterwards.

M'r ROANE. The next day?

WITNESS. He did not specify.

M'r HENKLE. That is the case of Haskins?

A. Yes, sir.

M'r PIKE. Who attended to the case?

WITNESS. I want to state further in connection with that same case

that General W. G. M. Davis claims that he is entitled to one-half of the fee in that case, under some old arrangement, I think, between him and the firm of Hughes, Denver & Peck, by which he was to have one-half of the fee for services which he rendered in the case long ago. General Davis still asserts that claim, and has informed me recently that
117 he has commenced suit by injunction, in London, against our firm and against M'r Haskins, the client, to forestall it there and compel one-half of the fee to be paid to him; so there are two outstanding claims at least. Whether it was valid or not I do not pretend to decide. There are two outstanding claims against us; that of General Davis, asserting the right to one-half, and Arthur Denver, asserting the right to one-fourth of it.

Mr. CASEY. Is the amount of the fee stated?

WITNESS. As I say, I do not know what it is.

General DENVER. The only agreement ever had with M'r Haskins was ten per cent.

WITNESS. I have no personal knowledge on the subject of the fee, and, of course, if I am allowed to state by way of parenthesis, we would object, in any event, to being made liable to pay anything to Judge Hughes' estate other than his share of the net results. All those contracts, whatever they are, whether valid or invalid, were made in his lifetime, and by his taking part in them. I may say that this Haskins case was originally before the War Department. It is for rents, I think, in New Orleans; and while before the War Department many years ago there was a commission upon it, composed of General Hunter and others, and they made a sort of recommendation. They do not render awards, I believe. They made a recommendation of certain allowances to be made, for some $40,000, and that was never acted upon; we never got the money. When the English Commission was organized, General Davis in the mean time disappeared. Whatever services he rendered were in connection with the War Department or that commission. He afterwards, I think, left the country. We then brought the case before this Mixed Commission, and there M'r Arthur Denver attended to it. All I know of the matter is the fact that M'r Arthur Denver gave his attention to the case, because I saw the papers prepared by him, in his handwriting. I was in the office, and had frequent communication with him when he attended to it.

M'r PIKE. Did he attend to it altogether, or did anybody else assist?

A. I did not give him any assistance. General Denver may have rendered him some.

Q. Did Judge Hughes give him any?

A. I never knew or heard of his giving him any.

118 Q. At what time was that award made?

A. It was towards the end of the sittings of the commission; I believe they made their awards nearly all at one time.

M'r CASEY (arbitrator). 24th of September, 1873, the awards bear date. The awards were all entered as of the same date. What time was it brought before them? This was one of the earlier awards.

WITNESS. M'r Roane has that in a separate class by itself; call that class —.

M'r PIKE. Does it appear at what time the proceedings were instituted before that commission?

By M'r ROANE. State whether this statement is correct as to the fee in the "Cabell case."

A. Yes, ten per cent.; I believe that to be correct.

So in regard to the insurance cases and the Villalonga case. I consider

that there is a great deal yet to be done with those cases, inasmuch as the questions of law have got to be fully argued. They are original questions in the Supreme Court, having never been discussed or settled. The questions involved in the insurance company cases are of a particularly intricate character.

Q. What time were those judgments given?

A. Those judgments were all obtained in Judge Hughes' lifetime; I believe in June, 1873. So far as the work was done in the Court of Claims, in the way of procuring judgments there, that had all been subsequently completed before Judge Hughes' death, but so far as the work in the appellate court remains to be done, no part of it was done before his death.

Q. Nothing has been done yet?

A. No, sir. You may say that nothing has been done yet. It all remains to be done. The cases have not been reached as yet for consideration.

M'r PIKE. Did Judge Hughes attend at all to those cases in the Court of Claims?

A. I never heard of his giving any attention to them at all in the Court of Claims. It is possible that my memory may be refreshed in regard to that; but I cannot now recall anything that he did. M'r Roane states in the paper that he has presented that all the work which has been done in these cases was done previous to the death of Judge
119 Hughes, and that it is supposed that the appeals will be dismissed at the next term of the Supreme Court.

Mr. Roane is right, perhaps, in saying that the work which was done previously, was done before Judge Hughes' death, but I think he is entirely in error in assuming that the appeal in these cases will be dismissed. That question has been very carefully considered by the Attorney-General, and he has given a very positive decision against dismissing the appeal. The Attorney-General has personally considered that question, and personally decided against us. That is all that there is in class three.

By Mr. ROANE. State whether the Attorney General has not heretofore refused to dismiss appeals and subsequently granted the motion to dismiss in those same cases.

A. I have never known him to recall a formal decision on the subject. He has sometimes said that he would not dismiss an appeal, and then afterwards done it. I do not think, however, that where he has made a formal decision—wherever he has taken the matter up personally and given a formal decision—that he has ever reversed such decision.

Q. Was the decision in the case referred to given in writing?

A. I do not know how the decision was made; I can only state this, by way of answering your question, that we had another case which was similar to the Villalonga, and which was a case that we had every reason to expect would not be appealed. We had, in fact, almost a promise to this effect; at all events a well-grounded expectation that it would not be. But when the time came on, and we attempted to stave off the appeal, they appealed it upon the ground of there being a precedent in the Villalonga case. They claim that the Attorney-General had fully examined that case, and had positively determined that no appeal in a case of that character should be dismissed. And again, in the Habersham case, the appeal was perfected, contrary to all expectations, on that specific ground. That is why I think it is pretty well settled. It is true that he may change his mind, but I have no reason to think that

he will do so. Therefore a great deal remains to be done before we can get the money, if we do get it in the ordinary course.

I now pass to the fourth class stated by Mr. Roane. He says: "In the following cases judgments were rendered in favor of the
120 claimants by the Court of Claims subsequent to the death of Judge Hughes; they have been appealed to the Supreme Court; that is where the judgments were rendered after his death, and have been appealed to the Supreme Court, and are now pending there. The first one he states in this class is the Habersham case. That is the case where we hoped there would not be any appeal, and in which we had every expectation there would not be, but it was appealed on the precedent stated.

Q. You expect to have to argue that appeal?

A. Yes, sir; I have not the least doubt but what we will have to argue it.

Q. Who attended to it at the Court of Claims?

A. The same as the other cases. I attended to it up to the time of my illness. After my return I think General Denver and myself attended to it. I think the general did rather more than I did. He took that especially in charge.

Q. Judge Hughes ever give any attention to it?

A. No, sir. General Denver rather took special charge of the Hunter case.

By Mr. ROANE. Was that case argued?

A. I cannot remember. If it was, General Denver argued it. I did not. The next case in this category is that of Alexander Collie, in which there was a judgment, as he states, in favor of claimant, May 15th, 1874, for $950,076.71, that was appealed by the United States June 30th, 1874. Mr. Roane states firm fee to be five per cent. Mr. Roane continues in his statement:

"In the above cases but little has been done by Denver & Peck since the death of Judge Hughes, as will appear from the transcript of entries from case docket of the Court of Claims hereto appended. These cases have been pending for years, and having been nearly finished before his death, claim is made for one-third of the fees which may be realized from both or either of them."

I wish to state that Mr. Roane is in error there in stating that in the Alexander Collie case the case was nearly finished when Judge Hughes died. The great bulk of the work in that case was done after his death, and to show that, I have brought up here the printed record of the case. The Collie case involved an immense sum of money—nearly a million
of dollars, but it was a case in which there was little or no doubt
121 as to the facts. The whole printed record as to the facts is about twenty-eight pages. They contain all the testimony of the case.

Q. The whole of the testimony?

A. Yes, sir. There are only about twenty eight printed pages of testimony taken in the case. In fact, there was never any doubt as to the facts of the case. The whole question was a question of law, and the questions of law were entirely original in that court, and in the Supreme Court of the United States, also, I might say. The case involved immense labor and an elaborate argument in the court below. I, myself, spent two months' time in preparing the briefs in the case. The printed briefs, you see, exceed in bulk the entire evidence.

Q. Who attended to it in the Court of Claims?

A. I attended to it almost exclusively. In regard to the final argument, it being a case of such magnitude, General Denver and I consulted

about the matter, and we thought it would be unwise for us to take the entire responsibility of arguing the case where so much was involved. My client living in New York, M'r McFarland came over to aid us in the argument, but he said little or nothing, but he adopted our views fully.

By M'r HENKLE. He came over to represent Duncan, Sherman & Co.?

A. Yes, sir.

Q. You did not pay him?

A. No, sir. I might say I had entire charge of the case. General Denver occasionally consulted with me about it after I came from Europe.

Q. What did Judge Hughes do in the case?

A. Nothing I ever heard of.

By M'r ROANE. Please examine my statement and see whether it is correct.

WITNESS. M'r Roane appends what I presume, and what I have no doubt is a correct statement of the docket entries, and they are very short, indeed. It is rather surprising that in a case involving such a vast amount of money that there should be so little action in the court upon it. The reason is that there was no controversy whatever about the facts. Alexander Collie was an Englishman who lived in England during the whole war, but he run the blockade. He was a blockade-runner living in England during the whole war. There was no doubt about his having owned the cotton.

122 By M'r PIKE:

Q. The question is now in the Supreme Court?

A. Yes, sir; there was a dissenting opinion; it was a pretty close question.

Q. Do you expect to have to argue it in the Supreme Court?

A. Yes, sir; I have no doubt of it whatever.

M'r ROANE. If it is not dismissed?

The WITNESS. The Attorney-General has refused the dismissal; there was a dissenting opinion, only three judges being on the bench; we got through by the skin of our teeth.

M'r CASEY (arbitrator). You could not get judgment at all on that.

A. No, sir; under the present law we could not; I would not have tried it under the present law; I see it requires three judges to give a judgment now in the Court of Claims.

By M'r ROANE:

Q. You do not know whether the case will be dismissed, or any of these cases you have spoken of?

A. No, sir; I don't know, of course, that they will not be; I know that in the Collie case nearly all of the labor, so far as professional services were concerned, was done after Hughes' death, except the merely routine labor, taking proof and so on; and the proof was taken by parties down there; all the labor will be in regard to the points of which I have spoken; we may be defeated yet; it is highly improbable that the Attorney-General will dismiss it.

By M'r PIKE:

Q. Is it understood the Attorney-General is bound to dismiss an appeal?

A. The presumption is that when he takes his appeal he will stick to it; sometimes he does dismiss it without a trial.

By M'r PIKE. State whether, when they have made a motion and de-

cided that they will not dismiss, it is even a supposable proposition that they are still going to dismiss.

A. I have scarcely ever known—I cannot say that I have ever known—of the Attorney-General dismissing a case after he has gone through these preliminary steps and has finally refused to do it. Sometimes he holds them under advisement for several months, and thus leaves us in suspense. But when he has taken time and given the case careful examination, and has discovered that there are questions of law such as he ought to have determined, I think he always adheres to his decision.

Q. Have you ever known him to dismiss such a case where only three judges were on the bench and one of them dissented?

A. No, sir; I have never known such a case.

By Mr. Henkle:

Q. It is a mere speculation as to whether the appeals will be dismissed or not?

Mr PIKE. Of course, the cases being in court, the presumption is that they will stay there.

By Mr Roane:

Q. State whether most of the cases of Duncan, Sherman & Co. have not been appealed and then dismissed?

A. Yes, that is true; but I have never known an instance where they have appealed the case and entered upon this examination which they pretend to make—and which I presume they do make—and have come to the conclusion that they will not dismiss and absolutely refuse then afterwards to turn around and dismiss it. In this case they have done that. In this case we have made a formal application and had it discussed before the Attorney-General, and he claims that it involves serious questions of law which ought to be determined by the Supreme Court of the United States.

Q. The Collie case?

A. Yes, sir. The question is, whether an alien, living in England the whole year, needs an amnesty in the first place; and, second, whether he got one.

Mr. CASEY (arbitrator). And in the next place, whether the running of the blockade, so far as a foreigner was concerned, was any offense at all?

A. Yes, sir.

By Mr. Roane:

Q. In most of the cotton cases in which judgment has been in favor of the claimant, the appeals have been taken and afterwards have been dismissed; they have not yet come on for trial in the Supreme Court of the United States.

WITNESS. That is true as to most of them, with the qualification that I have stated. I may state it all in one sentence—that the Attorney-General usually takes appeals in all large cases. He then institutes an examination through his subordinates, and if after such examin-
124 ation he discovers there is ground for moving for a new trial, or not such ground, or serious law questions that ought to be discussed, or that there were not such, he then takes his stand one way or the other. He either dismisses the motion then, or decides to insist upon it. After he has done that I cannot say that I have ever known him to change his position.

Mr. CASEY (arbitrator). I suppose there is very little to be assumed in regard to that question as a matter of fact.

Mr. ROANE. Nothing, except that we must not take it for granted that because there is an appeal that it is going to be prosecuted in the Supreme Court of the United States.

Mr. PIKE. It is to be presumed that in a case of that importance that when an appeal is taken it will be insisted upon.

WITNESS. I would like to state that the great bulk of the labor in Collie case was done after Judge Hughes' death, and if it is to be retried in the Supreme Court it will, of course, increase that. As to the Habersham case, judgment was rendered in April, 1874. Judge Hughes having died in October, 1873, there was a good deal done after Judge Hughes' death in the case; how much I don't know. General Denver had more particular charge of that, and he can tell you. I presume the transcripts will show. I have no reason to question them, but I wish to call the attention of the referees, if it shall be necessary, to the fact that the transcripts of the docket entries are not always the best test as to what labor is done in the case. A great deal of labor has been done in the cases that does not appear in the docket entries. They furnished a sort of index of what is done in the office; the Collie case, for instance, where the great point was the preparation of the argument. I went over to New York and spent nearly a week with the parties over there in preparing the argument, and spent at least two months' time here on it.

Passing on the fifth class, Mr. Roane states, "following cases were decided in the Court of Claims, but appeals have been taken to the Supreme Court of the United States."

Mr. ROANE. Those cases were taken from General Denver's exhibits—Warren Hall's claim for $18,000.

Q. Who attended that.

A. General Denver had charge of that case almost entirely.

125 Q. Do you know whether Judge Hughes had anything to do with it?

A. I never heard of Judge Hughes attending to the case. I do not think he knew anything about it. I did very little, so little it is hardly worth while to mention it.

WITNESS. There were four claims to that cotton.

General DENVER. There were three; there were Roach, Hill, and Hall, all of whom claimed. There was a judgment given for Hall and Roach.

Mr. PIKE. Is that the only case on the list?

A. No, sir; seven.

Q. What is the first one?

A. Warren Hall.

Q. Are there three claimants in that case, or three cases?

A. The decision was against us and we appealed.

Q. Is appeal *is* still pending?

A. Yes, sir; it is our appeal, and of course we will prosecute it.

Q. Has it been argued?

A. No, sir; it has not been argued.

Q. Has there been any brief filed?

A. No, sir; it has only been appealed within a few months. It will not be reached for some time.

Q. I believe you stated Judge Hughes did not attend to it all.

A. No, sir; General Denver attended to that case. The next case is that of Leonidas Haskell.

Q. Who attended to that?

A. I attended to that in all its early stages. It has been pending a long time in the Court of Claims. It is one of the S't Louis commission cases, which may be familiar to the referees. Haskell contracted. I think M'r Hosmer had a great deal to do with sending some of those men to the penitentiary.

M'r HOSMER. Unfortunately we did not send your client there.

M'r ROANE. I will say that Judge Hughes did not attend to any of that business—any of those cases in the Court of Claims. It is not necessary for M'r Pike to ask the question; very few of them he attended to until we come to the Warren-Mitchell case.

Q. Just go on with the other cases.

126 A. The Leonidas Haskell case was a claim set up by M'r Haskell for furnishing mules to the United States Army at the rate of $119 a piece; then the S't Louis commission took the matter into consideration, and allowed him $114 a piece. He sued for the difference; he got along very nicely until the Theodore Adams cases, or some other, in the Supreme Court, destroyed our hopes and ended the case, and we had practically to abandon it; it was a hopeless case; we could not bring this case so as to encounter the principle involved in the Adams cases; they were in all essential particulars the same, and we therefore abandoned it. Afterwards Congress passed an act giving the court a new jurisdiction in the case. It was rather a slender act; we thought it might be broad enough.

Q. When did they pass it?

A. At the session before the last—3d of March, 1873; then there having been a new law on the subject, M'r Haskell had in the meantime died, and General Denver had been appointed, with M'r's Haskell, executor—he being executor, she executrix; as to that case it has been decided against us by the Court of Claims on the ground that the new law was not broad enough.

Q. You brought a new suit?

A. No, sir; the act invested the court with jurisdiction to hear the present suit and do justice and equity; the court held that justice and equity meant chancery law; we thought it meant substantial justice; they held, however, it meant chancery law. We took an appeal to the Supreme Court of the United States. We take the ground in that case that when Congress passed a new law on the subject, it became a new matter, and has nothing whatever to do with the old firm; that that is a new law on the subject, and made entirely a different case.

Q. You had abandoned the claim before?

A. Oh, yes; we had done nothing with it for years. Of course, there was no use of progressing with it. It was a dead block. We say when Congress passed a new law on the subject, however, it made it a new case, and that is the case which Hughes, Denver & Peck had nothing to do with—the new case—except as they might be employed in the future.

M'r ROANE. It was an old claim?

WITNESS. It is true it was an old claim; the next one is the

127 claim of Whitesides, which was decided adversely, and has been appealed to the Supreme Court, and in which case Judge Casey was counsel with us.

Q. Who attended to it?

A. What little it got, I think I gave. I believe Judge Casey attended to it principally.

Q. None of those cases have been argued in the Supreme Court?

A. No, sir; nor likely to be argued very soon. The next case is the case of Comstock & McClellan. That is the case I had charge of almost entirely. Judge Hughes did a little something in that case. I had one or two conferences with Judge Hughes about it.

Q. At what time?

A. Several years ago. A good many years ago I drew the petition in that case. It involves the very important question, the right of the claimants to recover the four cents a pound cotton tax, I think it is. I drew a petition in the case, and the United States demurred to it. We argued it, I making the argument. The demurrer was sustained. We appealed it to the Supreme Court of the United States. But it is a new question; the case involves an immense amount of money. It was an internal revenue case, I think; it is on appeal in the Supreme Court.

Q. Has it been argued in the Supreme Court?

A. No, sir; the bulk of the labor will be done in the Supreme Court.

Q. It is purely a law question?

A. Yes, sir; C. A. Donald's case has been abandoned, I believe.

Q. Who attended to it entirely?

A. I attended to it. There was an appeal taken, and I wrote to Mr. Donalds to send on the fees to effect it, but he never did, and I believe the record has never been perfected in the Supreme Court.

Q. Has the time expired?

A. Yes, sir; but then they never moved to dismiss. I suppose now we might file the record. The United States has never come and moved to dismiss, and I suppose until they do that it is allowable. The Bishop & Westcott case, I would rather General Denver would testify as to that case.

Q. He attended to it, did he?

A. Yes, sir; I attended to it in the inception of it. I had charge
128 of it for a while. I afterwards passed it over to the general, and he afterwards took charge of it, and has had charge of it for several years entirely. The Warren Mitchell case is a case of considerable magnitude—$129,193. This case is a suit in the Court of Claims, decided adversely to the claimant by an evenly divided court. The firm were employed in that case on a fee of one-third. After Judge Hughes' death, when the court met at the following term, it was about ready for trial; was ready for trial; it was one of the early cases on the docket. Warren Mitchel sent his attorneys on here and insisted, by reason of Judge Hughes' death, all his arrangements were terminated, and he did not want to have anything to do with Gen. Denver or myself. I told him of course we were willing to withdraw from the case, but that inasmuch as we had got the case right up to the point of hearing, we wanted to preserve our rights to the fee, and he might state his case to the Court of Claims and they might do what they pleased. The Court of Claims heard the case and entered an order that we should have our fee out of the judgment—our full fee of thirty-three and a third per cent., and that we should be displaced. Thereupon we were displaced as attorneys of record. I have always held myself ready and tendered my services on all occasions to carry out our contract for the purpose of protecting our fee. Since Judge Hughes' death, Mr Warren Mitchell has declined to accept any services; whether he will change his mind or not I do not know. Up to the present time, as I say, he has declined to accept any services from Denver & Peck, because he doesn't want to pay us our full fee. He denies the jurisdiction of the Court of Claims to give us that lien.

Mr. HENKLE. In the event of the judgment being rendered in your

favor in that case, do you deny Judge Hughes would be entitled to one-third of the fee?

A. In one sense I do. I am desirous of stating these facts to the referees, so that they will understand these matters. I will explain my position in regard to that. Denver & Peck, since the death of Judge Hughes, have not rendered very much service in that case. The principal service we rendered was in this controversy with Warren Mitchell in his attempt to turn us out of the case. That gave rise to a controversy about it. It caused us a great deal of trouble. We had to give considerable time and attention to it with a view of protecting all parties in the fee. We thought inasmuch as Warren Mitchell had em-
129 ployed us and we had rendered service up to the time of Judge Hughes' death that we were entitled to our fee out of any judgment they may get. The Court of Claims have so decided. Whether the Court of Claims has any jurisdiction over the matter is doubtful. If their decision is held to be within their jurisdiction and the case is decided in the Supreme Court favorable, whether we will render any more services, depends on whether M'r Warren Mitchell changes his mind or not. Up to this time he refuses to accept any service from us.

Q. Who attended the case?

A. I attended to the case in its early stages. I attended to it for a good while, I think, before I went to Europe. I do not know whether it was before or after the time I was taken sick Judge Hughes took charge of it. I think it was before I was taken sick Judge Hughes ostensibly took charge of it, and M'r Roane rendered considerable service in the case in the way of getting up testimony, and I think he prepared the brief in the case. I am inclined to think that what Judge Hughes did in the case he did by proxy, for I never knew of his doing anything personally in the case.

M'r ROANE. Oh, yes; he did something personally.

M'r HENKLE. The clients looked to Judge Hughes.

WITNESS. This was a particular instance where the client had unbounded faith in Judge Hughes and looked to him largely, although for three or four years after the case was brought into our office it was in my hands, because I had charge of that class of cases; but the latter part of the time it was in Judge Hughes' hands, and he took some of the testimony.

M'r ROANE. The case was really ready for trial before the death of Judge Hughes?

WITNESS. It was ready for trial when it came back into my hands after Judge Hughes' death. I took charge of it then, and it was ready for trial, with exception of one or two unfortunate depositions, which were afterwards gotten rid of. It was rather an excess than a deficiency; there was a little too much proof on one point.

Q. What became of the case?

A. The case was decided adversely by an evenly divided court; the court stood two to two. The case has gone to the Supreme Court.

Q. I understand you have been displaced in the court below?

130 A. Yes, sir.

By M'r HENKLE: And your right to the fees preserved?

A. Yes, sir. Whether we will do anything in the Supreme Court depends on M'r Warren Mitchell. We hold ourselves ready to do anything he wants us to do. He has notified us that he does not want us to render any service. It has not been argued yet and may not be for some time.

The tenth point in M'r Roane's claim is as follows: "Claim is made

for one-third of the amount which may be realized hereafter from outstanding debts due to the firm of Hughes, Denver & Peck, or from the sale or transfer of any property or claim of any description whatever belonging to the firm."

I do not think we have any contract with Warren Mitchell by which we are not to render any further services. He has repudiated us. Of course, if he should change his mind and want us to render him service, why of course we should do so. It is not likely he will, however. Commenting upon M'r Roane's claim as to one of the fees in these cases, we should consider, even if the points of law were all established in his favor, he would not be entitled to it, because I do not consider a case "nearly finished" when there is a judgment rendered in one court, and that an adverse one, and when we have to take it to an appellate court and endeavor to have the judgment below reversed.

By M'r HENKLE: Q. If you do not follow it in the appellate court?

WITNESS. You are referring to the Warren Mitchell case; I have stated my views, as regards that case, fully. M'r Denver called my attention to this Warren Hall case. I suppose that after what M'r Roane has stated here it is understood that his claim is confined to net fees.

It happens M'r Warren Hall had two sets of attorneys running on here for a year or two, but who did not encounter each other for a long while. We found both sets of attorneys prosecuting a suit for the same cotton, and finally they both agreed to unite their efforts and divide the fees. That is all. If I am allowed, in my testimony, to interject an argument, I should say that we consider that case as not being "nearly finished" where it is situated as in category No. 5.

M'r Roane's sixth point is as follows: "In the case of Eliza M. Dawson for $55,125, pending in the claims commission, claim is made for one-third of the fee, most of the work having been performed pre-
131 vious to the death of Judge Hughes. In the case of Ella M. Guy for $23,776.50, and Earl D. Barden for $7,250, pending in the same commission, claim is made for one-fourth of the fees which may be realized." I know little or nothing about the cases, and I will not waste the time of the referees in testifying about them. They are cases before the Southern Claims Commission, and I had little or nothing to do with them.

Q. Any awards?

A. No, sir; I believe not. I think they were all pending. Mr. Roane's claim, I see, is only fourth of that which may be realized; one-third in the Dawson case; one-fourth in the other. I see, in these other cases, that M'r Roane only claims one-fourth the fees.

M'r PIKE. Did Judge Hughes do anything in those cases at all?

A. I think he did something in the cases. He had ostensible charge of them. I could not say how much he did. I know he pretended to have charge of them.

Q. Those cases were before the Southern Claims Commission?

A. Yes, sir; at least the Dawson & Guy cases. I do not know anything about the Barden case. I did not know we had such a case there; but as to the Dawson and Guy cases, Judge Hughes did figure about them some. As to how much he did, I could not tell. It has been a good while ago. We had them a great while before the commission was organized.

Q. Has he done anything before that commission?

A. I do not think he has. I do not know of his doing anything.

M'r ROANE. I testified that everything done in the Dawson case—

favor in that case, do you deny Judge Hughes would be entitled to one-third of the fee?

A. In one sense I do. I am desirous of stating these facts to the referees, so that they will understand these matters. I will explain my position in regard to that. Denver & Peck, since the death of Judge Hughes, have not rendered very much service in that case. The principal service we rendered was in this controversy with Warren Mitchell in his attempt to turn us out of the case. That gave rise to a controversy about it. It caused us a great deal of trouble. We had to give considerable time and attention to it with a view of protecting all parties in the fee. We thought inasmuch as Warren Mitchell had em-
129 ployed us and we had rendered service up to the time of Judge Hughes' death that we were entitled to our fee out of any judgment they may get. The Court of Claims have so decided. Whether the Court of Claims has any jurisdiction over the matter is doubtful. If their decision is held to be within their jurisdiction and the case is decided in the Supreme Court favorable, whether we will render any more services, depends on whether M'r Warren Mitchell changes his mind or not. Up to this time he refuses to accept any service from us.

Q. Who attended the case?

A. I attended to the case in its early stages. I attended to it for a good while, I think, before I went to Europe. I do not know whether it was before or after the time I was taken sick Judge Hughes took charge of it. I think it was before I was taken sick Judge Hughes ostensibly took charge of it, and M'r Roane rendered considerable service in the case in the way of getting up testimony, and I think he prepared the brief in the case. I am inclined to think that what Judge Hughes did in the case he did by proxy, for I never knew of his doing anything personally in the case.

M'r ROANE. Oh, yes; he did something personally.

M'r HENKLE. The clients looked to Judge Hughes.

WITNESS. This was a particular instance where the client had unbounded faith in Judge Hughes and looked to him largely, although for three or four years after the case was brought into our office it was in my hands, because I had charge of that class of cases; but the latter part of the time it was in Judge Hughes' hands, and he took some of the testimony.

M'r ROANE. The case was really ready for trial before the death of Judge Hughes?

WITNESS. It was ready for trial when it came back into my hands after Judge Hughes' death. I took charge of it then, and it was ready for trial, with exception of one or two unfortunate depositions, which were afterwards gotten rid of. It was rather an excess than a deficiency; there was a little too much proof on one point.

Q. What became of the case?

A. The case was decided adversely by an evenly divided court; the court stood two to two. The case has gone to the Supreme Court.

Q. I understand you have been displaced in the court below?

130 A. Yes, sir.

By M'r HENKLE: And your right to the fees preserved?

A. Yes, sir. Whether we will do anything in the Supreme Court depends on M'r Warren Mitchell. We hold ourselves ready to do anything he wants us to do. He has notified us that he does not want us to render any service. It has not been argued yet and may not be for some time.

The tenth point in M'r Roane's claim is as follows: "Claim is made

for one-third of the amount which may be realized hereafter from outstanding debts due to the firm of Hughes, Denver & Peck, or from the sale or transfer of any property or claim of any description whatever belonging to the firm."

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131 vious to the death of Judge Hughes. In the case of Ella M. Guy for $23,776.50, and Earl D. Barden for $7,250, pending in the same commission, claim is made for one-fourth of the fees which may be realized." I know little or nothing about the cases, and I will not waste the time of the referees in testifying about them. They are cases before the Southern Claims Commission, and I had little or nothing to do with them.

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M'r PIKE. Did Judge Hughes do anything in those cases at all?

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Q. Has he done anything before that commission?

A. I do not think he has. I do not know of his doing anything.

M'r ROANE. I testified that everything done in the Dawson case—

most of the work had been done by M'r Middleton before Judge Hughes' death. In the other two cases nothing has been done yet.

M'r Roane, in his seventh point, says: "In the twenty-four cases enumerated in Exhibit No. 1 to Denver's answer, as still pending in the Court of Claims, some of which are for large amounts, and in some of which judgment will unquestionably be obtained, claim is made for one-fourth of the fees which may be realized." He merely claims one-fourth part of the fees.

132 Q. What are they?

A. I do not know what they are.

M'r ROANE. They are cases pending in the Court of Claims. Of course, Judge Hughes—I believe it is admitted—did nothing about these cases.

M'r Roane's eighth point is as follows: "In the Hot Springs case, pending in the Court of Claims, to the claims for the refunding of the cotton tax pending in Congress, claim is made for one-fourth of the fees which may be realized by the firm of Hughes, Denver & Peck."

Q. What has been done in that Hot Springs case?

A. There was very little done in it.

Q. What has been done in it?

A. I have not had charge of it; I do not know much about it; General Denver and I have been running it together.

Q. How much work has been done in that case in the Court of Claims, and how much remains to be done?

A. I think nearly all the work remains to be done. I do not think much effective work had been done in the case.

Q. What was the nature of the case?

A. It is a suit brought to recover the title to the reservation known as the Hot Springs, in Arkansas.

Q. Do you know what the value of the property is?

A. I understand that it is worth about a million dollars. It includes the famous Hot Springs, and they are variously estimated.

Q. Are you acquainted with the case in which the firm were employed sufficiently to know what is the basis of the claim?

A. No, sir; I have never done much in the case.

M'r PIKE. I suppose it may be stated on the record by consent to be a suit for title to one hundred and sixty acres, including the Hot Springs of Washita, under a pre-emption of the year 1834.

M'r HENKLE. That is all right.

WITNESS. I will state further, in connection with that case, that about all the labor in that case—the effective work of the case—remains to be done by somebody.

Q. It is a mixed question of law and fact, or do you know enough about it to enable you to state?

133 A. I should think it was mainly a question of law, as far as I have had anything to do with it; I think it is almost entirely a question of law, although there is some dispute about the facts also; but the main question is a question of law.

M'r Roane says, under his ninth head, "In all other cases, whether enumerated or not, belonging to the old firm of Hughes, Denver & Peck, pending, or which have been pending, and the fees not yet collected or divided before any other courts, before Congress, before the Executive Departments, before the various commissioners for the settlement of claims, or before any other tribunal of any kind whatever, claim is made for one-fourth of the fees which may be realized."

Q. Do you know of any others except those set out in the answers?

A. I do not know of any others; I do not know any question of facts on which his testimony is required; it is a mere general claim for all the residuary cases; there is a case of the Agricultural College.

By M'r ROANE:

Q. Is not there a case of M'r McVeigh?

A. I do not think we had any claim of McVeigh; I do not know of any other. The tenth claim is another general claim, for one-third of the outstanding debts due the firm "from the amount realized hereafter from outstanding debts due to the firm of Hughes, Denver & Peck, or from the sale or transfer of any property or claim of any description whatever belonging to the firm."

I do not know of any question of fact that arises under that section on which the testimony would be required.

Q. Do you know of any such amounts due the firm?

A. There are considerable amounts due the firm; several thousand dollars; but there are none of them very likely to be collected.

Q. Is it not as much as $20,000?

A. Yes, sir; on the books, in one shape or other.

M'r PIKE. Hadn't we better have a statement made out and filed?

M'r ROANE. This statement embraces all.

WITNESS. Those are most all of long standing, and I do not suppose they are worth $500—the whole of them.

M'r HENKLE. I suppose there is no controversy about the fact
134 that if any of those old debts are paid, Judge Hughes' estate will be entitled to one-third?

A. I do not know of any reason why it should not be; there may be some reasons why if they should be collected they should not be divided equally.

M'r ROANE. Or the sale of any property you may have belonging to the firm?

WITNESS. We have no property belonging to the firm, except office furniture.

M'r ROANE. I mean office furniture and such like.

The 11th point is as follows: "That all firm fees hereafter from whatever source realized be divided as soon as collected; also amounts realized from debts due the firm of Hughes, Denver & Peck." I do not know of anything that requires testimony on that point. There are some points in M'r Roane's testimony of yesterday which I wish to review. With regard to the settlement which he claims to have made with M'r Arthur Denver; in that matter M'r Arthur Denver was authorized to do nothing but to settle up the books; not to adjust any controversy whatever with M'r Roane and ourselves, but to settle up the books and see where we stood; see what the condition of his various accounts was, and to adjust everything in relation to the books; we had money on hand then, and we wanted to pay our debts, and we wanted to have an understanding as to what our debts were, and who we did owe, and how the accounts of the different members of the firm stood, and as agent for General Denver and myself, M'r Arthur Denver went through the books with M'r Roane, and settled them up, as I understood, and furnished a statement of how each member's accounts stood. M'r Arthur Denver was not authorized by me, and I do not think pretended to settle the controversy that arose on this bill and answer.

M'r ROANE. Nobody pretends that he had.

M'r HENKLE. That settlement, you said yesterday, was a correct statement of the accounts of the individual members of the firm.

WITNESS. Yes, sir; that was considered a correct statement of the accounts of the different members of the firm, Judge Hughes' accounts having been at that time largely overdrawn, I think several thousand dollars. We had some money on hand then, and, as M'r Roane alleges, we paid him some money, but we did not, as I understand it, di-
135 vide any particular fees with him, but we gave him at two different times two sums of money; on the 14th of January, 1874, we gave him $1,000, and took his receipt for it, and here is his receipt.

(Paper introduced in evidence and made a part hereof, and marked Exhibit A, C. F. P.)

WITNESS. Here is the second receipt; it is five days later.

(Paper introduced in evidence, and made a part hereof and marked Exhibit B, C. F. P.)

There was another little matter of $200, being money which I had personally sent to Judge Hughes and for which Mr. Roane sent me a receipt in his own handwriting. Here is the receipt.

(Paper introduced in evidence, and made a part hereof and marked Exhibit C, C. F. P.)

That is rather a matter personal to myself and Mr. Roane. That makes $3,200 that was paid, but as I stated it was paid not as being due on any particular case or matter, but only on account. Of course no one ever disputed that Judge Hughes was entitled to something, and that it was perfectly safe to pay him $3,000 and take a receipt on account.

Mr. PIKE. It had nothing to do with the question whether he was entitled to one-third or one-fourth in the fees.

A. No, sir; Mr. Arthur Denver was never authorized to settle that question, and I do not think he assumed so to do. I do not understand that Mr. Roane thought so either.

WITNESS. In regard to the settlement of the Hunton case, Mr. Roane, from his statement yesterday, seems to have assumed that his consent was necessary to the settlement of that case—to the compromise of that case. I did not and do not so understand it. In all such matters I preferred to confer with Mr. Roane, and get his consent whenever a compromise was to be made, as a more prudent course. Judge Hughes' estate was undoubtedly interested in the result of any suit against the firm. He was required to contribute to it, gain or lose; and entirely as a matter of courtesy I consulted with him.

By Mr. Roane:

Q. State whether Judge Hughes' position in regard to that suit was not altogether different from yours, and whether he had not employed a different attorney to represent him.

A. I understand that he had. I rather thought that he did not
136 intend to set up any defence. But that did not alter in any way the right of the surviving members to compromise, settle, and adjust the claim against the firm, whether suit had been brought against the members of the firm. I have no doubt that the two surviving members had a right to compromise the suit, they acting in good faith; and if they chose to consult the executor it was a mere matter of courtesy, notwithstanding the fact that Judge Hughes had filed the same pleas exactly as all the rest of us had. I had heard vague rumors of great things that he intended to do.

By M'r Roane:

Q. He had employed a different attorney to represent him?

A. Yes, sir; when he died I have not the least doubt that the sur-

viving members had the right to make such compromise, acting in good faith, as to them seemed best; and in consulting M'r Roane about it, I merely did it as an act of courtesy, and with the further addition that I wanted to have the consent of every party in interest, but I did not consider that it was a legal necessity at all. That will be for the referees to determine, however. The letter which he addressed to me has been placed on the records here; and in that he imposed upon me a condition which I was under no obligation to regard in any way, and which merely provides that as a condition to our compromising that suit Judge Hughes' share shall be paid over to him; but certainly there was nothing in the letter as to what his share was, and we were unable to agree as to what his share was.

By M'r Roane:

Q. But the letter was sent?

A. Yes, sir; and was received and the compromise effected.

M'r ROANE. What I call the letter, or contract, had been sent to you before, all done cotemporaneously?

A. Yes, sir, and had been received by me. I compromised the suit notwithstanding the letter, and I considered by that that we were bound to pay over to Judge Hughes, as I admitted then, and admit now we are bound, to whatever his share may be. But the dispute was as to what his share was, and therefore it could not be paid over.

In referring to M'r Roane's testimony of yesterday, I will state. He says that I agreed to abide by what I might call——

Mr. PIKE. That was the Laplante case?

A. Yes, sir.

Q. Has Judge Hughes received his share of that fee?

137 A. Yes, sir; the fees have been divided and he received his share of that fee, and the party afterwards brought suit to recover half of it.

Q. Judge Hughes received his fee?

A. The suit was brought against us as a firm to recover one-half the amount we had received, upon the ground we had agreed to pay to another man. I compromised it by paying about one-third of what he claimed. I paid him about thirty-three and a third per cent. on the dollar. He claimed some $22,000, and I paid him about $4,500.

By M'r Roane:

Did not M'r Arthur Denver receive one-half of the fee in the Laplante case?

A. I think he did.

Q. The fee was about $28,000?

A. I think about $25,000.

Q. And he received one-half of the fee?

A. Yes, sir.

Q. Has he ever been charged with one-half of the amount charged on the compromise?

A. Yes, sir; I think he has been. I have never examined to see.

Q. State whether he was not properly chargeable with one-half?

A. I should not think so; it is a proposition of law, however.

Q. He received one-half of the fee, and the other party came in and claimed the other half; which substantially left us without any fee?

Q. Of course he should be charged with one-half of the compromise fee?

A. That is a matter of inference which others can draw as well as I.

By M'r Pike:

What was the agreement made with M'r Arthur Denver when he was employed?

A. I have no objection to going into that inquiry; but I will state it has nothing to do with this case, and draws in collateral inquiries which tend to confuse it.

By M'r Roane:

It was just simply $4,500 that was paid in compromise; that was paid by Hughes, Denver & Peck. M'r Denver received one-half of the fee paid in the Laplante case, and it would seem to me to be just that he should pay.

M'r PIKE. That is what I want to know, whether it would be or not.

138 WITNESS. I am, perhaps, not the proper person to judge in that case, because if the money was paid to the firm, I should get my share.

M'r HINKLE. Was M'r Denver charged with half?

A. I do not know; I believe he was, but I really do not know; I never examined into it, not supposing it had any earthly reference to this controversy.

M'r PIKE. I do not suppose it has; but if it is to go on the record it ought all to be stated.

WITNESS. I am merely testifying now with regard to a certain alleged supplemental agreement which M'r Roane set up, and he bases upon it a letter in which I asked his consent to settle the suit, and he attached a condition to his assent, and then I did compromise the suit; therefore he said I accepted the condition. I say in the first place that I asked him as a matter of courtesy, and it imposed no obligation on me whatever. There was no contract. If there had been a contract, we have always been ready to carry it out.

M'r CASEY (abitrator). The question is whether the firm is to be credited with $4,500, the amount paid to M'r Hunton, or $2,250.

M'r PIKE. All that was adjusted in this settlement.

M'r ROANE. No; there was a letter which appears amongst the exhibits in which I stated that I thought he ought to be charged with one-half of it; in my letter to General Denver stating that Arthur and myself had arrived at a basis of settlement; in that letter I stated that I thought he ought to be charged with one-half.

Q. Was he charged as a matter of fact in your settlement with one-half?

A. No, sir.

M'r ROANE. Here is the letter (presenting the letter referred to).

By M'r Pike:

What was the agreement between Arthur Denver and the firm when he was employed to attend to the business? Didn't he attend to all the business pretty much?

A. He attended to about half; at least half of the business—yes, more than half. He was largely interested in the case, and attended to it. My understanding of the case was that it was a case that M'r Denver—it is a long history, but if you desire me to go into it I will do so.

139 (The examination of the witness was here suspended for a moment, M'r Casey, one of the arbitrators, being called from the room on some other business.)

I will state to the referees precisely the position I take about this matter of inquiry. M'r Roane yesterday introduced a letter in reply to an application I had made to him to compromise the Hunton suit. The Hunton suit was a suit against the firm of Hughes, Denver & Peck; I did ask M'r Roane if he would consent to a compromise at $4,500, the claim being some $22,500. He replied to me in a letter, and he claims that letter amounted to a supplementary contract; I applied to M'r Roane for his consent merely as a matter of courtesy, and to satisfy my own conscience, so that I would not be blamed. The condition, such as it was, we have always been ready to comply with, but we have not been able to, because we have not been able to ascertain what Judge Hughes' share was. I did not, by that letter, give any consent as to what it was; that is all the explanation was about. It is now proposed to interrogate me still further, as to whether, when that $4,500 was paid, somebody else should not have paid half of it. Now, admit that that very person ought to have paid half of it, that he was liable to us—to Judge Hughes, Denver & Peck—that person is not a party to this suit. Even if the referees decide that we ought to collect it, he would not be bound. I do not think that matter ought to be gone into when that person is not a party to the controversy. You might as well pursue that course with regard to all of our court affairs; I would rather not go into that kind of inquiry; I do not see that it has any bearing on this case.

M'r PIKE. I will not ask any further questions on that subject if M'r Peck does not wish to answer any further questions in regard to it. I should not have asked any question about it if it had not been for what is on the record.

WITNESS. Then I will pass to the next point in M'r Roane's testimony which I wish to offer in explanation, and that is, I agreed to live up to this post-mortem agreement, which the referees will remember. What I mean by that is the agreement of August 13th and 18th, 1869. I wish to state as to that, that M'r Roane and I had several interviews in which that matter was spoken of, and that I told M'r Roane distinctly
140 what I tell him now, that I desired a peaceable settlement of all this matter and desired to have it settled without litigation, and was very earnest in that desire; that I had made certain legal objections as to this agreement; that I was not disposed to urge them and had not examined into them, but, so far as I was concerned, if I could settle the matter without litigation I was disposed to settle and live by that agreement. I said then just exactly as I state now, that if I could have an amicable settlement without suit. M'r Roane and I had several interviews afterwards on this same subject, the result of which was that he conceived it was his duty to urge what I deemed extreme claims.

Q. But long previous to this, state whether you did not say that you would live up to this, and whether you did not always recognize the contract.

A. I say precisely in the connection that I state—and I state the same to day—that so far as I am personally concerned, if I can have an amicable settlement and he is disposed to give up his extreme demands—what I call extreme demands—I will be willing to abide by the agreement. I told him distinctly that I had not examined the legal objections to it and was not disposed to examine them.

Q. When was that?

A. I cannot separate the interviews, because we had three or four interviews and conversations, and I cannot distinguish and separate them, but we talked it over and that is what I said in substance.

By M'r ROANE. Q. Was not that after Gen. Denver had refused to recognize the contract? Hadn't you previously, before there was any talk of denying the contract, said to me you would live up to it?

A. I said to M'r Roane, and I said it precisely in connection with what I have stated, that M'r Roane would not have any trouble with me whatever; that I was perfectly willing to settle by the contract if we could have an amicable settlement. And I am perfectly willing, if M'r Roane will withdraw what I conceive to be his extreme demands, to make a settlement with him exactly upon that basis. I speak for myself only, but M'r Roane has conceived it to be his duty to set up what I conceive to be very unreasonable, very extraordinary, and extreme demands.

Q. What do you mean; in the Lamar case?

A. Yes, sir. And that it is his duty to urge every possible
141 legal point against the old members of the firm. He has taken that course, and I conceive that I have a right to take the same course.

Q. That is before the courts?

A. I know, but I state that by way of explanation, that I am willing to do all that I said then, but I cannot consent—and I think that I am not bound to consent—to waive legal objections, when every legal liability is asserted against me in the strictest sense. Mr. Roane has conceived that to be his duty, and I have nothing to say.

Mr. ROANE. The controversy between Mr. Peck and myself was before anything was said about a suit, and he said to me in the conversation that he would live up to it.

WITNESS. But before we had that controversy, or about that time—of course it is difficult where we had several conversations running through a month or two to state when exactly—but I stated what Mr. Roane says I stated with the qualification that the object was for a peaceable settlement; but where there was no amicable settlement, I conceive I have the same privilege of asserting my legal rights that he has. I believe that is all I have to say with regard to Mr. Roane's examination, unless my attorneys can call my attention to something.

Mr. PIKE. I wish you to state in detail as near as you can—not referring to these cases that you have already mentioned, but as to other business in the Supreme Court and elsewhere—as near as you can, what attention to the business of the firm Judge Hughes gave up to the letter of his of 13th of August, 1869, from that time forward, what attention he gave to the business of the firm, to what part of it, and where, and how?

A. I will state that for the last three or four years of Judge Hughes' life I saw very, very little of him. I scarcely know of his attending to any business for the last three or four years of his life. He was away from the office. He had a room there in our office on the Avenue—that was called his room—a room rather set apart and assigned to him, but I scarcely ever saw him there. I do not believe I ever saw him in that room six times. I do not know that I ever saw him sitting down in that room in my life. My knowledge of what he did, or did not do, could hardly arise from personal observation, because, as I say, I hardly ever saw him. He would occasionally at intervals, perhaps, of once a fo t-
night, come into my room to pass a few words and to make a few
142 inquiries and pass the compliments of the day. He would often, perhaps once in two or three months, send for me, and say that he wanted to see me about something; not generally matters of any importance, and therefore my knowledge of his diligence or his neg-

lect would arise from the condition of the business; as to whether certain things were done or not or were omitted to be done; and my judgment is largely based upon those omissions to transact business which naturally belonged to him to transact.

Q. Just state what they were.

A. From the observation of these omissions I think he was extremely neglectful of the business; that he practically abandoned the office. When we selected our present offices on Pennsylvania avenue we selected three rooms, with a view of each one of us having a room for the transaction of business.

Q. When was that?

A. The date was given by Mr. Roane yesterday.

Mr. ROANE. It was July, 1869.

WITNESS. I took the back room, General Denver took the front room, and Judge Hughes took the middle room. He had some furniture put in it. I think it is safe for me to say that he practically abandoned that office—that he scarcely ever came there except to pass through, to look in. As I said before, I do not know that I ever saw him sitting down in that office in my life.

Q. In the courts what did he do?

A. It is true that at this time—I want to state all that I can and recall about it—at this time Judge Hughes did have offices elsewhere, carrying on individual business. Part of the time he had them over Alexander's store, and part of the time over these rooms. I very seldom went up into either of his offices. I very seldom ever visited one of those offices, although I did at times. What he did do or did not do I can only judge of by results and what I saw was generally done in the business.

Q. State those results.

A. Those results were exceedingly meagre. I have not any data to testify.

Q. What did he do in the Supreme Court in cases from the time?

A. It was a sort of understanding in the firm, so far as we had
143 a division of the business, that Judge Hughes should attend to all the Supreme Court cases. He was very fond of going into the Supreme Court; it was a part of his nature to like to argue cases in there. He liked to appear there. He in a general way had charge of our Supreme Court business, but the results were extremely unfortunate.

Q. Can you state in what he did do in the Supreme Court from July '69, on?

Mr. ROANE. State whether he did not attend to all the business in the Supreme Court.

A. He ostensibly did. He took charge of, and charged himself rather with the duty of attending to those cases, but in my judgment they were not attended to.

Mr. ROANE. That is a question of opinion.

WITNESS. Yes, I say in my judgment. Some cases that I knew of I thought he made very little preparation indeed. I have known two or three cases where he did not prepare his briefs, or inform himself about the cases until the very last moment, and then very imperfectly.

Mr. ROANE. That is an opinion, and I was stopped from giving an opinion yesterday.

WITNESS. Make any objection that you have to make. Twice I have known of cases coming up in the Supreme Court where he came to me on the day before they were tried. And Mr. Roane must be familiar

with it from the fact that he helped to get up the briefs and filed them. He came to me to have the briefs prepared. The case was to be tried the next day. That I do not consider suitable preparation in any case.

Mr. ROANE. I do not know to what case you refer.

WITNESS. I was trying to think of the name of it. I cannot recall the name of it, but I can recall the circumstances.

By Mr. ROANE. Do I understand you to say that he had not made any preparation in the case, and the case was to come on the next day for trial?

A. I do not know that he had not, except what he told me.

Q. No brief had been filed?

A. No, sir; except on the eve of the trial.

Q. Did you hear him argue the cases in there?

A. I do not think I did; I was trying to think; I cannot recollect that I did. Judge Hughes did not take charge of all the cases.

144 Here and there was a case which I preferred, and he preferred also, I suppose, that I should take charge of myself.

Q. Can you state how many cases he did attend to from July, '69, on?

A. I suppose nine or ten cases that he ostensibly attended to, but, as I say, in my judgment, they were not attended to.

Q. Did he employ other counsel?

A. Yes, sir; very frequently. There was one case in which he employed Mr. Humphrey Marshall, who prepared the brief, and, I think, made the argument.

Q. Who paid the fee?

A. My impression is he paid Mr. Marshall five hundred dollars.

Q. Out of what funds?

A. I think the firm paid that.

Q. Did he employ anybody else in any other suits?

A. In the case of Burns he or somebody employed Senator Carpenter; I understand that he did. He was with Mr. Carpenter all the time.

Q. How much fee did Mr. Carpenter get?

A. Mr. Carpenter was paid $3,000, and I understand the firm paid it, but I am not positive about that fact; I have been so informed, that $3,000 was paid by the firm; I am informed it was paid by the firm; I did not know it at the time; I did not so understand it, and it was merely upon information that I make the statement; I may be in error about it.

Q. Were there any other cases in which he employed other counsel?

A. I cannot recall any other case; I know it was rather a frequent habit of Judge Hughes to bring other lawyers in with him in cases, but I cannot recall any other specific cases; perhaps I could if cases were named to me.

Q. Did he attend to the cases in the Supreme Court in the year 1872—I do not mean cotton cases; I do not speak of the cotton-tax cases.

A. I was disabled in the spring of 1872 and moved away; I do not know really what did occur; prior to that I do not remember; but, as I stated before, he has ostensibly all of our Supreme Court cases. Some cases I had charge of in the Supreme Court—cases in which I

145 continued right straight through. In some cases I prepared the brief for him—cases which I tried below.

Q. Do you know of any cases in which he never read the record until the case was coming up for trial?

A. I cannot say I know of any such case. I could not specify any

case in which I knew that to be the fact, unless you can call my attention to it. I have known of cases in the Court of Claims where he did not read the record until the cases came up for trial.

By M'r ROANE. How do you know?

A. I know from what he told me.

By M'r HENKLE. That was not his business.

A. I know, but General Pike was asking me.

By M'r PIKE. State whether the firm was employed at one time by Perrie Fuller.

A. I want to state one further thing about that Carpenter matter. I found that my answer having been prepared for me the allegation about that $3,000 having been paid by the firm was in it, and I, not recollecting any such thing, and being in doubt about the matter, struck it out, because I was in doubt as to the fact. General Denver, I think, preserved it in his answer, and it stands in his answer, but I struck it out of mine from doubt as to the fact. I was not clear as to the point, and therefore I struck it out. As to the Perrie Fuller matter I remember they were employed by Perrie Fuller in a case.

Q. State what you recollect about it.

A. Almost all I know about it is from what I heard from Judge Hughes himself, that Fuller & McDonland had a case. They took it into the Court of Claims.

By M'r HENKLE. I suppose that it is hardly competent to state what Judge Hughes, who is dead, what he said to him.

By M'r PIKE. State whether the firm had such a claim in their hands.

A. Yes, sir; Fuller & McDonland's claim, and it was put into the Court of Claims. Mess'rs Chipman and Hosmer were employed in it.

Q. By whom, do you know?

A. I know simply because Judge Hughes told me. I was not present. My understanding of it was that Fuller & McDonland wanted Chipman & Hosmer to be associated with us, and Judge Hughes
146 employed, or I understood that Judge Hughes employed Chipman & Hosmer at Fuller's request.

Q. Was the claim collected?

A. Yes, sir; by Chipman & Hosmer, and it resulted in our not getting any fee. Chipman & Hosmer collected the money and paid it over to Fuller & McDonland, and left us out in the cold.

Q. Did your firm have no charge on the books against Fuller & McDonland?

A. Yes, sir; we always claimed they owed us; they ought to have paid us.

Q. Do you know whether there is any charge on your books against Fuller & McDonland?

A. Yes, sir; I think there is. If there is not, we always claimed that they ought to have paid us a fee in that case. There was some misunderstanding; some disarrangement by which we failed to get our fee.

Q. You say you were employed by Fuller & McDonland, and claimed the fee from them and have not got it?

A. No, sir; I heard about the time the answers were filed in this case that Judge Hughes had claimed from Fuller an allowance, and had gotten it.

Q. You do not know whether that is so or not?

A. No, sir; I only state it by way of explanation why it happens to appear. I was informed of it about that time. I have no personal knowledge on the subject.

Q. State, if you can tell, what was the amount of the claim of Fuller & McDonland.

A. I think about $68,000; it was a good large claim. If I recollect rightly our fee was to be ten per cent. of that.

Q. $6,800 the fee would have been?

A. Yes, sir.

WASHINGTON, D. C., *August* 28, 1874.

Commission met pursuant to adjournment. Present, all the parties, with their respective counsel.

Examination of Charles F. Peck continued.

Cross-examination by M'r Henkle:

Q. While you were in Europe, did not Duncan, Sherman & Co.
147 send a lawyer (M'r MacFarland) from New York here to look after their cases in the Court of Claims, and did he not attend to them during your absence in Europe?

A. Of course I have no personal knowledge, directly, of what occurred here while I was in Europe; but I know that as soon as I was taken ill- or soon after I was taken ill, Mr. MacFarland came over here, and Mr. MacFarland expressed his intention to pay some attention to the business in those cases—as much as he might be able to; and upon information I can state that Mr. MacFarland did come over here once or twice, and perhaps oftener. But it would be impossible for me to say just what part Mr. MacFarland took in the business.

Q. Now in the cases stated in the first class of this statement of Mr. Roane——

A. Let me qualify there. The referees will understand that there were in our office about 90 cases in which we were employed by Duncan, Sherman & Co., and they have always constituted a class of cases in the office. Mr. MacFarland's action had reference solely to these cases of Duncan, Sherman & Co.

Q. It is to those cases I was attracting your attention.

A. I supposed you refered to those.

Mr. CASEY (arbitrator). Savannah cotton cases?

A. Yes, sir; they were all, I think, Savannah cotton cases. After them, we had other Savannah cotton cases.

Mr. HENKLE. I want to ask you if the briefs of those cases named in the first class of your statement were not all prepared by you before you went to Europe, or if they had been prepared before you went away?

A. I think in many of them I had prepared briefs before I went away; but I may say to the referees what they already know, perhaps, but will make it a part of my evidence, that the preparation of the briefs in the mere routine cotton cases is a matter of very little moment, and requires very little ability, only some care. Therefore, it did not make very much impression upon me when I did prepare a brief, and I cannot say definitely how many I did prepare.

Q. What does the labor consist in, in the preparation of cases in the Court of Claims; in the taking of testimony, and examining legal questions, or what?

A. It of course varies with the character of the case. In those cotton cases there were a great many other important law questions,
148 which had to be settled first in the Court of Claims, so far as they could be settled there, and then in the Supreme Court of the United States; and there was here and there a cotton case which required a very high degree of professional skill and a great deal of labor

to properly conduct. Those cases kept arising from time to time, and even now some of them are not yet settled. Some of our remaining cases will require a great deal of that kind of care. But cases which involve no particular question, except those which had already been settled, did not require so much or but very little skill in the argument.

Q. How was it with these particular cases, or do you remember?

A. A good many of these were routine cases; and, as to those routine cases, care and accuracy were required in getting up the testimony and in seeing that all the points were covered, and in seeing that the brief presented distinctly to the court the points involved. And then, in almost every case, collateral questions of practice would arise—questions growing out of confusion of ownership, often. There was scarcely any case that did not involve some question of practice in the course of proceedings.

Q. In the Hardee case; that case was appealed and the appeal subsequently withdrawn?

A. I think not; the case was never appealed.

Q. There was a motion made for a new trial, and a good many affidavits, as you said on yesterday, were taken to sustain the motion, and in response to the motion; where were those affidavits taken?

A. Those affidavits were taken, of course, after the motion for a new trial was made, and before it was heard. I can give you the dates from a memorandum. (Witness referring to memorandum book.) Through some mistake of the clerk of the court, which I now remember, the clerk of the court failed to enter the date of the filing of that motion for a new trial, and I remember now there was a controversy as to when it was filed. I know, however, it was a little more than three months after the judgment was rendered, which would bring it early in July, 1873. I remember now, in the argument, that was one of the points.

Q. Where were the affidavits taken on your side of the case?

A. Some of them were taken here, but the bulk of them were taken in Savannah.

149 Q. Did you go down there to take those affidavits?

A. No, sir; I did not.

Q. What counsel took them?

A. I think Mr. John O. Ferrill aided and acted under our direction there.

Q. Did they prepare the affidavits down there; I suppose they must have done so?

A. I presume they prepared the affidavits; but they prepared them under directions and instructions from us here as to what we wanted.

Q. Was not all of the preparation and the labor performed down there to resist that motion for a new trial?

A. In one sense. The bulk of the labor was there, although the direction came entirely from our office. The bulk of the writing was done there, and the running around and looking for the witnesses was done there.

Q. The general direction as to what evidence was wanted you furnished them?

A. The form in which we wanted it; and there was constant correspondence.

Q. Now, did not the firm of Duncan, Sherman & Co., pay the counsel that were employed down there for that part of the preparation?

A. I presume they did; we certainly did not.

Mr. ROANE. Not Duncan, Sherman & Co. That was not one of their cases?

WITNESS. No; I was in error about that. That was not one of the Duncan, Sherman & Co.'s cases.

Q. Did not the client pay for the preparation?

A. I stated yesterday that there was a drawback on the fee. Mr. Hardee did pay the expenses down there, but claimed that we should bear a certain portion, which we did.

Q. You settled it in that way?

A. Yes, sir.

Q. What proportion of the fee did you bear?

A. I do not know; a reference to the books will show; and perhaps General Denver will testify. I had nothing to do with the settlement.

Q. Now, in these cases in which Duncan, Sherman & Co. were interested, and the appeals were dismissed—in the second class I believe it is, Mr Roane, on your paper—I want to know whether the instrumentalities which were used to procure the dismissal of those appeals
150 were not set in motion and the agents and counsel employed were not furnished and paid for by Duncan, Sherman & Co.

A. Whatever agencies were used, except the presentation of the matter to the Attorney-General, were used by Duncan, Sherman & Co., or by their agents, not by our firm. I saw the Attorney-General repeatedly about them, and had frequent conferences with him, as I believe General Denver did also; but whatever instrumentalities or agencies, if there were any, were not used by me, certainly.

Q. Did you do anything else in regard to the cases other than such service as was necessary to be done by the counsel of record?

A. No, sir; unless, perhaps, these personal applications to the Attorney-General. In an ordinary lawsuit, of course, I do not think of going to the attorney on the other side, and arguing matters with him; but in the case of the government, we regard the Attorney-General as something more than the attorney on the other side. He is, in addition to to that, a public functionary, and we deem it our duty to make application to him, and to urge them with such zeal and argument as we can, and induce him to abandon the appeals which had been taken perhaps improvidently, and in those cases I did that, but nothing more.

Q. Did you not consider at the time that Duncan, Sherman & Co. had practically secured the dismissal of the appeals?

A. That would be doing great injustice to the Attorney-General for me to say so. The inference is that the Attorney-General dismissed the appeals because he thought they ought not to be prosecuted, and I do not know of any other reasons.

Q. Sometimes persons have peculiar influences that others have not. In regard to this John Haskins case, you say in your examination-in-chief that General Davis claims to be entitled to one-half of the fee in that case. Who is General Davis? Is he a lawyer here?

A. General Davis was an agent in the Confederate army; I believe a citizen of Florida, formerly; and he came here at the close of the war, and lived here for some time. He afterwards went to Europe, and within a year has returned from Europe, and I have seen him here repeatedly within the past year. I saw him to-day. I do not think, however, he calls this his residence now. I do not think he has
151 resided here for some two or three years, but he, possibly, might state differently.

Q. What services did he render in the case?

A. He rendered some service in the case—I could not state the precise nature of it—but the case was before the War Department, or

before that commission, the War Department committee, to examine these claims. I do not know the services exactly.

Q. Did he render any service before this British and American Commission?

A. No, sir; I do not think he was in the country while the case was pending there.

Q. Had you not made some new arrangement with the client about the fees in that case—that decision by the War Department?

A. No, sir; they recommended an allowance, but the Secretary of War disapproved of that recommendation, and refused to carry it out.

Q. Did you, or your firm, make any arrangement with the client afterwards for the fees for the prosecution of the case before this commission?

A. None that I ever heard of; I will state I have not had any charge of the Haskins case, and have little personal knowledge about it. I never heard of any such arrangement.

Q. Either at that time, or any time since?

A. Yes, sir; if any have been made it is without my knowledge.

Q. Has your firm at any time recognized the right of Gen. Davis to one-half of the fees in that case?

A. We never have recognized his right. He, however, is persistently and continually, even up to this morning, claiming a share in the fees.

Q. You stated, I think, in your examination-in-chief, that M'r Arthur Denver claimed to be entitled to one-quarter of the fee in this Haskins case?

A. Yes, sir.

Q. By what right did M'r Arthur Denver claim to be entitled to one-fourth of the fee?

A. As I am informed, the claims under an agreement made between himself on the one part, and Judge Hughes and General Denver on the other part, I being absent at the time.

152 Q. Did you ever make any agreement with him yourself with regard to it?

A. I never made any other agreement than assert that I would abide by what my partners had done. The matter was brought to my attention upon my return, and I stated that I had been unavoidably absent, and had thrown a large portion of the business upon my partners; and I did not think it would lie with me to object to any arrangement they made to facilitate the business during my absence. I meant by that, that if they did make such a contract I ratified it. If they had been making such a contract, I made none myself.

Q. You stood by whatever they did?

A. Yes, sir.

Q. Do you happen to know in any such way as to make it competent evidence whether Judge Hughes did repudiate this authorization almost immediately after it was made?

A. I know it by what Judge Hughes and M'r Arthur Denver both told me; not any other way. If this is deemed competent, I will state it.

M'r HENKLE. I presume, perhaps it is not strictly so; I would like to have it if the counsel on the other side have no objection.

M'r PIKE. I have no objection.

M'r HENKLE. Then state what they said.

A. Judge Hughes, first, I think, spoke to me on the subject, and said that he and General Denver had spoken to Arthur Denver about interesting him in this business, and that he had agreed that Arthur Denver should share equally with us in our fee; that is, the fees should be di-

vided into four parts, one of which Arthur Denver should have. That afterwards he got to thinking the matter over, and he thought it was best not to make any such arrangement, and he went and told Arthur Denver so. That he concluded he would not abide by that arrangement they had made there. He had acted a little hastily, or some equivalent expression. I called Arthur Denver's attention to this statement of Judge Hughes, and he said it was not true; that Judge Hughes had considerable time afterwards come to him, after he had got the papers and done a good deal of work in the case—had come and objected to the arrangement, and that he considered that Judge Hughes had no
153 right to go back upon a contract that had once been made, and intimated, with more or less directness, that he considered the contract a binding one.

Q. How long after Judge Hughes told you that he had made the arrangement was it that he told you that he had withdrawn his authority to Mr. Denver?

A. He said it was very soon. He and Mr. Denver differed in that part of the story. Judge Hughes said it was very soon; I think he said within a day or two.

Q. Before any material labor had been done?

A. Yes, sir. Mr. Arthur Denver differed with him in that, perhaps, and stated it was some considerable time; that he had got hold of the papers, and had done some considerable work in the case. And upon that, perhaps, as to the time they gave me different statements.

Q. Was not Arthur Denver required under an agreement of settlement with him to render services without compensation in winding up the partnership business of Hughes, Denver & Peck?

A. I think he was; but I should prefer the agreement should speak for itself. It is in writing.

Q. Will you have that agreement filed?

A. If I have a copy of it. I have not seen it for years.

Mr. ROANE. I have a copy of it.

Mr. PIKE. You had better file the copy if you have one.

Mr. HENKLE. I want to ask you if in the third class of cases mentioned in Mr. Roane's statement was not, substantially, all the work done in those cases before Judge Hughes' death?

A. The cases were all in judgment before his death. The services that have been performed since are services in endeavoring to procure a dismissal of the appeals. There have been interviews with the Attorney-General to that effect, and written arguments in the insurance company cases. I know that, and in the Villalonga case, but the bulk of the work was done before Judge Hughes' death. What remains to be done is the further prosecution of the cases in the appellate court.

Q. Most of the work that has been done up to this time was done before the judge's death?

A. The work done up to this time, the cases not being yet finished.

Q. And if the appeal should be dismissed, then it might be said
154 that the work was "substantially" all done in the lifetime of Judge Hughes, might it not?

A. Yes, sir; using the word "substantially," perhaps, in its proper sense. That is, much the larger portion was done before his death.

Q. Using "substantially" as convertible with the term "nearly finished," as used in the contract?

A. Yes, sir. I should say those cases, if they were to be paid now, I should say that they were nearly finished in point of labor, if the labor stopped now; but they are all pending yet in the appellate court.

Q. A number of those cases belonged to the Duncan, Sherman & Co. cases, all except the Cabell?

A. Yes, sir.

Q. In your experience in these cases—cases that have been sent to you by that firm—in which appeals have been entered, have not they nearly all been dismissed?

WITNESS. Heretofore?

COUNSEL. Yes, sir.

WITNESS. Yes, sir; they have nearly all been dismissed in the manner I stated in my examination yesterday.

Q. Of course you did your duty in that matter, but they employed agencies themselves in addition to your labors?

A. Yes, sir; I state this, however, with the same qualifications that I stated yesterday, that they have been dismissed, when an application has been made to the Attorney-General and he has acted favorably; but I know of no case that has been dismissed where, upon application being made, he has acted adversely upon the application, which is in the category of these cases.

Q. In no case where he has made a decision and then reconsidered it?

A. I can recollect no such case where he has made a decision and afterwards changed it in his mind and dismissed the appeal, I believe. Unless some one can refresh my recollection, I cannot recall any such case.

Q. Now, Mr. Peck, what did your partner, Gen. Denver, do in the preparation of these cases in the Court of Claims? It has been stated by you or Mr. Roane, I do not remember now which, that there was a sort of tacit arrangement for a division of labor, as I understood it. Gen. Denver taking the department business, and Judge Hughes the Supreme Court, and you the Court of Claims. You spoke yesterday of Gen. Denver having rendered services in the Court of Claims; what did he do in the preparation of those cases?

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A. What do you mean by those cases?

COUNSEL. Any of those Court of Claims cases.

WITNESS. Up to the time I was taken ill, February 6th, 1872, Gen. Denver did but little; very little, I should say; I had the general charge of them—not exclusively, in the sense of excluding either Judge Hughes or Gen. Denver from counselling or participating in them, but I did most of the work myself.

Q. That was understood to be your business?

A. That was understood to be my business, I believe; at any rate, I made it my business.

Q. Up to the time of your illness Gen. Denver had taken very little part in the preparation of cases in the Court of Claims?

A. There are some exceptions; there were some cases that Gen. Denver had a great deal to do with there, but they were few in number; none of these cases would, I think, *would* be included in that expression.

Q. Up to that time I want to ask you which devoted the more time to the preparation of the business in the Court of Claims, General Denver or Judge Hughes?

A. Well, with the exception of the few cases that I referred to, I do not think that either one of them gave much attention to the business in the Court of Claims.

Q. Which did the more? I mean up to the time you were taken ill.

A. When we commenced in the Court of Claims the first half-dozen cases, perhaps, that were tried there, Judge Hughes did more than General Denver did about them. He participated in the trial of perhaps

some half a dozen cases; after that he did little or nothing; General Denver, I might say, did little or nothing, excepting in some cases that he had special charge of—exceptional cases. One of them notably I recall, was the Norris case; he had entire charge of that; that was a large and important case; General Denver had entire charge of that.

Q. Did he argue the case?

A. Yes, sir.

Q. Were there not cases in the Court of Claims of which Judge Hughes took almost the entire charge?

156 A. There were, I think, cases in which he did take almost the entire charge; I think in the Maddox case it might be said that he did; I am open to correction if I am wrong there.

Q. You would say, would you not, that up to the time of your illness, Judge Hughes had given as much attention to the Court of Claims business as General Denver?

A. Yes, sir; I think, perhaps, up to the time of my illness neither one of them had given any great attention, and there was not very much difference. I had charge of that business, and I had generally attended to it without much help.

Q. What occurred after your illness to have made it the duty of Judge Hughes to give to the business in the Court of Claims an attention which he had not given before for years? I mean what obligation was there from your arrangements between yourselves as partners?

A. I had undertaken a great deal more business than was in my capacity to do; it was not possible for me to do it, and I broke down—and broke down very severely under it—and I ceased my operation in the midst of the term; just about in the most active season of the operations of the Court of Claims; that early in February, when it had got just well going, I think I tried a number of cases; I tried one case, not a firm case, however, the day before I was taken ill; my illness was so severe that I was forbidden to communicate with anybody about business at all, so that the bulk of the business of the firm, that which needed immediate attention, was left for somebody to attend to, and it devolved upon my partners, who were interested, to step in and take upon themselves the burden in those cases that I had been carrying.

Q. To do the business that you had theretofore done?

A. Yes, sir; or else let it be entirely neglected.

Q. Duncan, Sherman & Co., so far as their cases were concerned, furnished counsel for that purpose, did they not?

A. I do not understand that they furnished local counsel, but they sent lawyers here from New York; the arrangement has always been between Duncan, Sherman, & Co. and ourselves that we were their counsel here; we have always been at liberty to call upon their counsel in New York for counsel and assistance. As I stated recently, I asked M'r McFarland to come over here and aid in trying the case; such

157 assistance we have always felt the right to call for, and always received it; and in these cases they did send M'r McFarland over here; but M'r McFarland has an immense practice in New York City, and it would have been far beyond the limits of possibility for him to step in my place, as I was doing more than I was able, and he has an immense practice there; of course it was impossible that he could give more than a cursory attention to this business; precisely how much attention he did pay I do not know.

Q. How much business was done during the period of your illness?

A. Judging from results I found on my return, a good deal had been done.

. Had many cases been disposed of?

.. Yes, sir.

2. And when did you return to the active prosecution of the busi-ss?

A. I returned about July 5th of the same year, but then it was vaca-n, and I staid here a few days only; business at that time of course d passed over for the term; of course I cannot give the referees a ry definite idea of how much had been done; but I thought in some ay or other my place had been abundantly supplied.

Q. You were absent from the office and practical business about five onths?

Q. Now, can you tell how many cases were tried in the Court of Claims

A. Yes, sir; except what business I attended to in Europe.

uring your absence?

A. I cannot; but the records will show; I have not looked them up to see.

Q. Were there any cases tried in which the briefs had not been prepared before you went away?

A. Yes, sir; I think there must have been quite a number, for all that time I was very much crowded, and I did not get very far ahead with my business; I had to do it from hand to mouth myself.

Q. Didn't you state to Mr. Roane—he asked me to ask you—if you did not state to him before he went away that you had prepared the briefs in all the cases?

A. I do not remember making that statement; I might have so stated; I do not remember.

Q. You do not remember what the fact is about it?

158 A. I do not know; my impression is there were a number of cases. I think likely I stated to Mr. Roane that in the cases on that docket I had all the briefs prepared. The Court of Claims makes up a docket every month, but I hardly think I made a statement with reference to the entire term, because we hardly knew what cases; cases may have been put upon the calendar after I left home, and tried, but I have no doubt some were disposed of.

Mr. ROANE. The expression Mr. Peck made was, "all cases likely to be reached."

WITNESS. That I may have done.

Q. You were absent from the active business for about one-half of one term?

A. The term had run about two months when I was taken down; but the first two months of the term are never very productive in business; the month of December is almost always busiest; January is a pretty good month, and February is a still better month. February and March, in my experience, are the months in which the bulk of the cases are tried.

Q. Do not you gentlemen who practice in the Court of Claims generally make it a point to have your preparations made before the term, in fact, begins?

A. Well, we do pretend to, and I kept up as well as I could. I have no doubt I had a good many cases ready for trial.

Q. Do you know what General Denver did in those cases, or in any of the cases during this hiatus in your experience?

A. I have no personal knowledge on this subject whatever; I know somebody did a good deal.

Q. Do you know whether General Denver had any assistance—whether

anybody else assisted him? Do you know whether Mr. McFarland assisted him any or not?

A. I think Mr. McFarland assisted him some; I think he made two or three flying trips over here. That I know by hearsay merely.

Q. Do you know whether the general employed anybody else to assist him?

A. I cannot remember that I ever heard that he did; I do not know that he did. His brother has always assisted him more or less in a general way, and may have assisted him in these cases.

159 Q. I want to ask you, without reflecting upon any gentleman's ability or anything else, whether the cases as you left them—whether such preparation was not made in the cases after you left them—was not such clerical labor merely such as might have been performed by Mr. Roane or any other competent clerk?

A. I have already explained. There are some cotton cases that do not require very high professional skill; they simply require industry and a good general knowledge of the rules of law, and do not require any high professional ability where they run in a groove, but here and there a large proportion of them do not exactly run in the groove, and certainly no one would be willing to trust that class of cases to anybody who had not considerable skill, because, although some cases do not require much, some cases can go through without very much, yet you never know what moment may be required.

Q. We are talking about the experience of your firm in particular business.

A. I was giving that as the experience of myself in those particular cases.

Q. You do not remember, from your recollection of those cases, whether the cases that were disposed of during your illness and absence from the office—whether the work that had been done in those cases was not the clerical work, or whether it was the highest class of professional labor?

A. It was a great deal of both, I should think, showing a clerical work in a higher sense than some persons seem to see fit. It was a professional work, but a good deal of it was such professional work such as a skillful clerk might render. It was, if I might say it, a good deal of both.

Q. Do you know whether Judge Hughes was called upon to take any part in consequence of your illness by General Denver or by you, to go in and *and* take charge or assist General Denver in the preparation and arrangement of the cases during your absence?

A. I do not know that any formal notice was ever served upon him, or any formal call made upon him, any further than the call which the duty to his clients required of him. I certainly made no specific demand upon him.

Q. Did you make any kind of demand upon him; did you notify him at all that you were going away, and these cases would need his attention?

160 A. I should state that I had notified him of my intention to go to Europe upon this business of Duncan, Sherman & Co. before I was taken sick. When I was taken sick I was forbidden to talk business with anybody for a long time; I did occasionally violate that rule; where persons came to my house, and it seemed very necessary that I should talk a little about business, I would sometimes break over the rule. I, however, did not see Judge Hughes, I believe,

from the time I was taken ill until after I returned from Europe. I was too ill to go to see him, and he did not come to see me.

Q. I want to ask you now, if Judge Hughes, after making this contract of dissolution and this other contract, which you call the post-mortem contract of August 13th, 1869, whether after that—after those two contracts—he did not give as much attention to the business in the Court of Claims as he had for years before given?

A. Well, sir, for a long time before that he had given no appreciable attention, and he did not give any appreciable attention after that.

Q. Then he went along afterwards just about as he had before?

A. Yes, sir; it was some time before that post-mortem agreement that he had attended to matters in the Court of Claims; there may be, as I say, rare exceptions—exceptions at long intervals.

Q. Except during the interval of time when you were absent, what was there in the exigency of your business or firm to have made it his duty to render an attention in the Court of Claims after these agreements which he had not done before? The date of this post-mortem agreement, as you call it, is the 13th of August, and the other contract, of the dissolution, is March, 1869. You say that the judge gave about as much attention afterwards as he had for several years before to the business in the Court of Claims?

A. Yes, sir; for two or three years before.

Q. Now, I want to know, and it is with reference to the state of the pleadings in this case—the judge is charged with negligence—I want to know what there was especially in this interval when you were sick and absent, what there was in the exigency of your business, and in the relation of the members of the firm to each other, that rendered the duty of the judge to give to the business of the Court of Claims an attention which he had not before for years given?

WITNESS. You confine your question, I see, to the business before the Court of Claims.

161 COUNSEL. Yes, sir; now I am confining myself to the question of the business before the Court of Claims.

A. There was no additional reason that I can see, [illegible] old firm had been dissolved and new obligations ha[illegible] The second obligation was, perhaps, no stronger than [illegible] was only fresher and newer.

Q. Did you not, when you made these contracts of disso[illegible] for the division of fees, and providing for the attention on [illegible] the members to the business, did not you contemplate just the kind of attention and labor that had theretofore been given by the [illegible] the firm respectively?

A. I cannot at this lapse of time state exactly what I had in contemplation, except as I can gather it from the instrument itself, and it seems to me that the instrument itself carried an obligation——

COUNSEL. That is a question for the court.

WITNESS. All right, then; I will stop right there. I can only call the attention of the referees to the instrument itself where it calls for the closing up of the business as rapidly as possible by the members of the firm, and as I had a right to expect that would be done, I presume I contemplated it in making the agreement.

Q. Do you know of your brother-in-law having called for a copy of that contract while you were absent in Europe?

A. Yes, sir; I understand he did. I was not here at the time.

Q. Did he do it by your authority or direction?

A. It was at my suggestion. I suggested that such a contract had

been signed, and I regarded it then as a perfectly valid contract. I had never had my attention called to the legal objections since raised by General Denver. I supposed it was a contract which my heirs could receive the benefit of in the event of my death, because I certainly had done nothing to forfeit my rights under it, and I did not suppose the survivors, in the event of my death, could set up any failure on their part to comply with its conditions, to defeat the rights of my heirs.

Q. In the event of your death you look' to that contract for the adjustment of your rights?

A. I considered that if—it is a matter of opinion—but I consid-
162 ered if I had died during my absence in Europe, as I had done nothing to forfeit my rights under the contract, neither of the survivors could set up any laches of their own to defeat my rights, and they would have had a right to recover under it. But that is expressing a legal opinion as to the objections raised by General Denver that it never did become a contract. Upon that legal question of course I expressed no opinion.

Q. I am only asking you how you regarded it and treated the contract yourself. You were a party to the tripartite agreement? You thought in the event of your death that it would determine your rights in regard to the earnings of this firm?

A. I supposed when I went to Europe that that would be the effect of the instrument, and the objections which I make to its being applicable in the like case to Judge Hughes' representatives have mainly arisen since that time. I state that because, as you said, from the suggestion, I believe, of General Denver.

Q. They did not originate with you?

A. Not altogether.

Q. Now, I want to ask you this direct question, whether, if this matter were alone between you and Judge Hughes' estate, if you would not consider that Judge Hughes' estate was entitled to a division of these fees upon the principles of this contract?

A. If I were alone represented on the side of the defendants I would settle with Mr. Roane in five minutes on the basis of that agreement for the purpose of procuring an amicable settlement of our difficulties, provided he would withdraw and dismiss all other suits. And in stating this I wish to be understood as insisting that I have perfect legal defences, and that in pursuing that course I would do it in the spirit of compromise and amity.

Q. When you say you had perfect legal defence?

A. I say I believe.

Q. When you say that you believe that you have a perfect legal defence, are we to understand that these defences apply to the suit now pending in the equity court of this District—of this subject-matter pending before the referees?

A. I believe I have perfect legal defences to the contract which is now set up, but that I would not urge those legal defences if I were met in the same spirit of amity and compromise that I should extend,
163 and I should add there that I am not, because I hold those views, and in certain events would so act, debarred from insisting upon my legal defences, while the other party insists upon his legal defenses.

Q. I want to ask you now whether you, or whether General Denver to your knowledge, in the lifetime of Judge Hughes, ever notified him or advised him that in the event of his death, or in the event of the death of either of the other members of the firm, it would be claimed on your

part or on the part of General Denver, that these contracts were not to be enforced in the division of the fees?

A. Yes, sir; according to my understanding of the correspondence between them, General Denver and Judge Hughes notified each other that such was their intention; not, perhaps, in a direct and express term, but according to the fair import of the language they used. I did not join in any such notification, for at the time I was in Europe; and after my return from Europe up to the time of Judge Hughes' death I held scarcely any communication with him upon any subject, he appearing to decline all personal intercourse with me.

Q. When was this correspondence between General Denver and Judge Hughes?

A. It was while I was in Europe.

Q. Do you mean in 1872?

A. No, sir; I refer to the correspondence which occurred in the early part of the year 1872, while I was in Europe.

Q. Do you mean while you were sick?

A. No, sir; while I was in Europe, in May, 1872.

Q. That is when you were sick?

Mr. ROANE. Just let the letters be read.

WITNESS. I might say that I consider further, so as to have my answers complete, that the transactions occurring between Judge Hughes and General Denver after that correspondence rendered any such notice unnecessary.

(The letter referred to having been read, the witness said:)

Subsequent to this correspondence Judge Hughes filed his motion in the supreme court of the District of Columbia, asking that General Denver be disbarred from practicing in that court on account of certain alleged improprieties. It is not worth while to go into that.

Q. What was the general nature of them?

164 Unprofessional conduct. I would rather not go into the nature of them.

Mr. PIKE. State whether they were not principally about the accounts of the firm.

A. I would rather not go into that; it is a side issue.

Mr. ROANE. Give the date of it.

The date of it is the 19th of October, two or three days before the death of Judge Hughes. He appeared and presented those charges in person, and asked the consideration of the court to them.

By Mr. HENKLE. There had been an unfortunate and unhappy disagreement between Judge Hughes and General Denver, extending some time back, hadn't there?

A. When I was taken sick, in February, 1872, there was no disagreement that I was aware of. When I came home I found that a disagreement or quarrel had arisen in the interval, about which I had no personal knowledge.

Q. We do not want to go into that; I do not think it is material to this at all.

Mr. PIKE. We do not propose to inquire into the merits at all, only to have the bare fact stated.

By Mr. HENKLE. I understand you to state—and I have great respect, and I do not mean to flatter you by saying it, for your opinion as a lawyer—I understand you to state that it is your opinion that you and General Denver have legal defences against the enforcement of these contracts, growing out of the fact of this disagreement between Judge

Hughes and General Denver—this correspondence and Judge Hughes' conduct in the presentation of a motion to disbar General Denver?

A. And Judge Hughes' neglect of business.

Q. I speak of these two separately. I want to know now upon what principle it is, while it would be a sufficient ground for the dissolution of a copartnership, that the members could not agree with each other, and therefore their business could not harmoniously be done—I want to know upon what principle it is that the fact that two parties to a contract who have determined their rights under past transactions by contract shall be affected by their subsequently quarreling?

A. The only objection I have to answering that question is that it anticipates the argument in the case, and if the line of examination is followed it will result in a discussion between us.

165 Q. I did not ask you; you stated it as your opinion.

A. I stated it merely because you asked me a question that required something of an omission or concession on my part.

Q. You went beyond the legitimate answer to my question and stated an opinion.

WITNESS. I will answer your question.

M'r CASEY (arbitrator). Hadn't you better, in the examination and statement of the evidence now, confine yourself to the facts?

WITNESS. I am not unwilling to answer the question, but I think the suggestion of the arbitrator is a good one.

M'r CASEY (arbitrator). We will get at that in the argument of the case, and I should prefer to have it in that shape; if there is any facts that grow out of it, Gen. Henkle, that you would like to ask.

M'r HENKLE. Well——

M'r PIKE. M'r Peck had a right to say, although he had a right to settle on certain conditions, yet he thought he had a legal defence.

M'r CASEY (arbitrator). He has stated that; the question as to what his reasons are is a matter of legal opinion and inference which is to be.

M'r ROANE. How does it affect him?

WITNESS. I would rather say that by way of argument.

M'r CASEY (arbitrator). I would be glad to hear in regard to that after we get at the facts.

M'r HENKLE. We had better not go into that now.

By M'r Henkle:

Q. I want to ask you now whether, besides the letters or the correspondence to which you have referred between Gen. Denver and Judge Hughes, you yourself or Gen. Denver, to your knowledge, ever notified Judge Hughes that you or he did not consider these contracts as a binding obligation upon the firm in the distribution of the fees that should accrue to the firm for the old business of Hughes, Denver & Peck.

A. I don't know what Gen. Denver may have done; he never gave such notification in my presence, or to my knowledge, other than has been stated. I made no such statement to Judge Hughes after these facts and occurrences arose. I scarcely ever saw Judge Hughes; probably not more than six times; after the last act was taken I had no opportunity; for he died, I think, the next day after. The motion

166 was filed on Friday, and he died the following Tuesday, being extremely ill in the interval.

Q. You never notified Judge Hughes that you considered he had done anything to forfeit his right under that contract, or either of those contracts?

A. I never notified him because whatever was done he had much more full knowledge than I had.

Q. You do not know of General Denver having notified him in any other way than by this correspondence to which you have already alluded?

A. I do not know of my own knowledge of such.

Q. Let us get along within the rules and then we will make better progress. In the settlement between M'r Arthur Denver and M'r Roane, about the 1st of January, 1874, were not the principles of these contracts applied as between them in the distribution of fees? Were the fees distributed or not upon the basis of this contract?

A. I do not see how they could have been possibly applied, because no question germane to these contracts arose. The fees were not divided, and only a certain sum of money was paid on account, and M'r Arthur Denver had no arthority to go into any question of that kind.

Q. I will ask you about that presently. I want to ask you now if it was not ascertained upon that settlement that there was a fund of $9,000, after making estimates and allowances for expenses that were to be incurred in the further prosecution of debts and so on—if there did not remain a clear fund of $9,000 for a division between partners, and that if the amount of $3,000 was not paid to the executor of Judge Hughes as his proportion of that fund?

A. If I recollect rightly the amount was considerably over $9,000, and the three thousand dollars was paid to M'r Roane simply and purely on account generally. Upon any possible hypothesis after the debts were paid, and Judge Hughes' account made good, Judge Hughes was entitled to that amount of money. I never have disputed it. I have never known General Denver to dispute it, but it was not, so far as I know, paid as a settlement and adjustment of any particular fees.

Q. Will you be kind enough to let us know what you mean by that, whether you say in any contingency Judge Hughes would be entitled to that amount of money. Do you mean that there would re-
167 main to him to be paid to him one-third, after paying the expenses and claims against your firm—of the results of your business up to that time—that there would remain to him a clear right to $3,000?

A. I mean that it was not within the limits of possibility that Judge Hughes' estate would be entitled to less than $3,000.

Q. And the business had then to be done?

A. To the condition of the firm. I do not speak of any particular case.

Q. I do not know that I make myself clear?

A. I wish to avoid saying that this was paid as the result of any particular cause.

Q. We claim there was a settlement between M'r Arthur Denver, representing your branch of the firm—M'r Roane represented Judge Hughes—of partnership accounts to that time. That is our claim. I am not asking you to accede to it.

A. Exactly. We thought that was a settlement of all that had been received up to that time.

Q. Yes; I understood you yesterday to say that so far as the statements of accounts between the partners were concerned, you thought that a fair and equitable settlement?

A. I do not mean to state it in that sense at all. I will state this, that M'r Roane had repeatedly applied to me for some money. He had stated that certain debts of the highest obligations in the matter of Judge Hughes' estate ought to be paid.

M'r ROANE. Preferred debts?

A. Yes, sir; I think they were, and that the estate was without means, and he was very anxious to have means. General Denver rather preferred there should not be any partial payments, and I acted as a sort of negotiator between them, M'r Roane being very anxious to obtain some money without waiting for a complete settlement and Gen. Denver preferring there should be no partial payments made. Gen. Denver, at my solicitation, consented to give M'r Roane some money, and I paid him the first $1,000 almost in doubt whether the general had consented to it, because I was anxious to meet M'r Roane's demands. I saw they were reasonable, and the general afterwards consented more explicitly to the payment of $2,000, I insisting it was perfectly safe, that we incurred no sort of responsibility in paying that much; but I did not pay that money, or cause it to be paid, because I thought it to be due under and by virtue of any specific
168 agreement, because at that time I knew that General Denver was opposed to the recognition of that instrument at all as ever having been a valid instrument in the inception. His position at that time was that it had never been executed, and, I might add, to the present.

Q. I understand that; the pleadings in the case show that. Now, I want to ask you whether, when you consented to pay $2,000, or before you consented to pay $3,000 to M'r Roane, you did not from a statement of the accounts of the firm made by Mr. Roane and Mr. Arthur Denver reach the conclusion that there was $3,000 at least due to Judge Hughes out of the amount of money on hand at that time from the business of the firm. I mean, now, without reference to any receipts which might accrue to the firm in the future—whether, if that had been a final settlement, and no further business to be done, if your firm had not any further business whatever, you would not have considered at that time Judge Hughes was entitled—you did not consider that he was entitled to at least $3,000 out of the money on hand?

A. I cannot say that I had any such conclusion in my mind. I do not think I had. I am quite certain that I had not. I think I paid him $3,000 on an entirely different view of the case.

Q. For what reason was it you authorized M'r Arthur Denver, with M'r Roane, to state the accounts with the members of your firm up to that time?

A. There were a great many unsettled matters upon our books. We owned a considerable number of debts that had been carried along that had not been settled, that ought to have been settled. I thought that it was expedient in all cases to get the consent of Mr. Roane to the settlement of those matters, and that he was really entitled to it, but I wanted his consent. For instance, in Indiana there was a judgment against the firm for some $2,200. It had been appealed in a certain way; a motion had been made for an appeal; the appeal had not been perfected; I wanted it to pay the judgment and abandon the case.

Q. I do not care about the details. I want to know why it was you deemed it necessary to have a settlement of the account before you agreed to pay M'r Roane $3,000?

A. M'r Roane was very urgent for money, and, perhaps, reasonably so.

Q. And he claimed you had money on hand?

169 A. We had a lot of money on hand.

Q. And he claimed he was entitled to part of it?

A. Yes, sir; and the question arose how much we would be safe in giving.

Q. And you had an account stated for the purpose of ascertain whether that could be done or not?

A. We had an account stated to see where we stood. I was rather urgent to let Mr. Roane have as much as it was safe to give him, and I think I paid him $1,000 before that settlement was concluded. I anticipated a little on that. I will not be positive about the amount.

Mr. ROANE. No, sir.

WITNESS. Mr. Roane says that I am in error about that.

By Mr. Henkle:

You had each member's account ranged—how much he had drawn, how much he was charged with—and then the excess drawn by Judge Hughes was drawn from his share?

A. Yes, sir; his account was made good, and then there was supposed to be $9,000—something like that—left over, and after making an allowance for amounts due by your firm and expenses necessary in the prosecution of your business.

A. Yes, sir.

Q. And that you concluded could be safely divided by three?

A. I thought it would be perfectly safe to give to Mr. Roane one-third of that.

Q. Now, I want to know if that has been all the business, or final settlement of the affairs of the firm, and there was no other business from which fees were to result, if you would not have so considered?

A. Oh, that is a hypothetical question; I would not, I may say—at least I think I would not; it is difficult for a witness to answer what he would have thought under a certain state of facts, which never did arise and never did enter into my mind; I may say I should not.

Q. What did you authorize Mr. Arthur Denver to do with regard to that settlement?

A. I authorized Mr. Arthur Denver to have the books written up, and to ascertain how our various accounts stood, and how much money we owed, and who we owed it to; Mr. Roane had been a former bookkeeper of the concern, and Mr. Arthur Denver had taken the books from
170 him; there were a great many disputed items; it was alleged that certain things should be entered on the books in Mr. Roane's time that had not been entered in a way that was distinctly understood; I forget now all the points, but there were twenty minor controversies, some of them quite small; none of them, I may say, that affected Mr. Roane's fair dealing in any way, but possible errors; we did not know where we stood; we wanted to know where we stood; Mr. Roane was urgent for money.

Q. Not that you wanted to know before you paid any money?

A. We wanted to know where we stood; we might have made a rough guess, and had given him more that it was entirely safe to give him; that was the full limit that he is entitled to in any aspect of the case. I insisted at the time, and Gen. Denver insisted, that should be strictly on account, to avoid any such question.

Q. Did you state that to Mr. Roane at the time?

A. I do not remember whether I saw Mr. Roane or not; Mr. Roane gave the receipts in that form; one of them I see is in my handwriting; the other is in Mr. Arthur Denver's handwriting.

Mr. ROANE. On account of the fees then on hand.

By Mr. Henkle:

Q. Of course you did not contemplate that to be a final settlement because there was other business to be done?

A. The question came up whether we did not have the right in settling a partnership matter to wait until the end—wait until we got all the money in, and find out what our final, ultimate liabilities might be at the end of the year, and that is one view of the case by which we might have kept Mr. Roane out of the money for a very long time. I was opposed to taking that view of the case; I proposed to let him have money, as it was safe to let him have it; Gen. Denver acceded to that view I know at first he was opposed to partial settlement of anything, and said there should be none. I might add that I should be acting in very bad faith toward Gen. Denver, knowing his objection to that agreement, if I had gone on and paid the money under it, thereby recognizing it, for I well knew then that he objected.

Q. You have already stated in your examination-in-chief that it was a tacit arrangement of your firm by which Judge Hughes took business in the Supreme Court, and I understand that it is claimed that Judge Hughes neglected that business. I want to know how many cases there were that went to the Supreme Court of the United States—cases of your firm that you argued in that court without the assistance of Judge Hughes.

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A. I have not had notice of any such answer; in the case of Floyd and Speed I certainly made the argument, and there are certain others. I have not any list of the Supreme Court cases.

Q. Do you mean there were any more that you argued without Judge Hughes assisting you?

A. I do not remember of ever having argued a case with Judge Hughes in the Supreme Court.

Q. When were those two cases argued that you referred to by name?

A. They were tried in the Court of Claims about the year 1866; they were argued about the year 1868 in the Supreme Court.

Q. That was before your dissolution?

A. That was before the dissolution.

Q. Did you argue any case in the Supreme Court after the dissolution? I mean of your old firm cases.

A. I cannot say positively that I did. I have prepared cases.

Q. You cannot say you argued any cases after your dissolution in the Supreme Court?

A. I cannot recall any case that I argued after the dissolution in the Supreme Court.

Q. Did not Judge Hughes argue all the cases after the dissolution of your firm that were argued there?

Mr PIKE. You had better reflect about that before you answer. You remember the case of the State of Texas against White and Childs.

A. As we were saying yesterday, there were associate counsel always.

Q. We will come to that presently. State whether there were any cases belonging to that firm that were not argued by Judge Hughes in the Supreme Court.

A. I have not that positive knowledge. I can get at it. I do not remember having argued any, and I do not remember of General Denver arguing any, and therefore, presumably, Judge Hughes had charge of the cases in the Supreme Court.

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Q. Then, presumably, Judge Hughes tried every case in the Supreme Court that was tried after the dissolution of the copartnership in 1869?

A. I presume he did have charge of them there; when you say "argued" it might admit of qualification. He had charge of them there.

A. Yes, sir.

Q. I am not talking about whether it was well done or illy done, but did he manage and control the cases?

A. Yes, sir.

Q. I understand you to say—if you do not, it is said in the answer of General Denver—that other counsel were employed to assist Judge Hughes in the Supreme Court; in what cases were counsel employed?

A. Counsel were employed in the Burns cases, I remember. It would require an examination of the records, but I think an examination of the docket in the Court of Claims and of the Supreme Court will show that every case there was associate counsel. I believe so.

I will answer your question unequivocally that Judge Hughes assumed to take charge of the business in the Supreme Court. When you asked me whether he did do it or not, that I cannot say, because I have no knowledge that he did so. I know that he pretended to do so, and to some extent did so. I do not know that he did not. I know to some extent that he did.

Q. You say that in a number of cases assistant counsel were employed by Judge Hughes. Were the counsel that were employed in the different cases paid by your firm for their services, or paid by the clients?

A. I cannot testify on that subject with any certainty. I was informed that in the case of Burns Matt. Carpenter was paid by our firm. M'r Roane had since made representations to me that have induced me to think that was a mistake, and my testimony will be indifferent on that subject.

Q. Are you able to state any case in which associate counsel in the Supreme Court were paid by your firm?

A. No, sir; no case of any magnitude. I remember one case where a fee of $500 was paid by our firm, but I have forgotten the case.

Q. Now, I want to ask you a professional question. These cases of yours in the Supreme Court of the United States were nearly all cases that came up from the Court of Claims, either appealed by you or the government, were they not?

173 A. Yes, sir; nearly all.

Q. And they involved very large sums of money, did'nt they?

A. No, sir.

Q. A great many of them?

A. The Burns case involved a large sum of money.

Q. In the local courts they were what would be regarded as very important cases?

A. Yes, sir; I guess you would have called them so. They were for $29,000 or $30,000. Some of them involved very large sums of money, but then the questions were so overwhelmingly decided against us that the appeal was more a matter of form than anything else; but you are right in saying that they involved large sums of money.

Q. Now I want to ask you whether you consider any lawyer, such as Judge Hughes, or one of us, would be justified in going into the Supreme Court of the United States alone, whatever his preparations might have been, and argue in the court of final resort causes involving such large sums of money?

A. I think it would have been wise and prudent in these cases for Judge Hughes to have had other counsel, if that answers the question;

M'r HENKLE. Yes, sir; it does.

Q. I want to ask you now whether you consider that the fact that he did employ other counsel to assist him in the Supreme Court is any reason why his proportion of fees should be reduced under these contracts?

A. I regard that as a question of law merely, but I will say that to my mind it was evidence frequently of want of preparation and attention to business on his part, and therefore it does have some bearing upon his right to recover. If a lawyer who is fully prepared and has thoroughly studied his case deems it advisable to have associate counsel, his judgment ought to be conclusive upon that, but a lawyer may seek associate counsel for the purpose of throwing the work upon them, and because he is not prepared to attend to the work himself.

Q. But if his client pays the associate counsel the firm is not injured by reason of his want of capacity, or negligence, is he?

A. The firm is not injured in the particular case, if other coun-
174 sel performed their work thoroughly and well, as a substitute for his want of attention, but, nevertheless, it is evidence to my mind of a neglect of business. I view it in that light.

Q. If it costs the firm nothing, should it be an occasion for refusing his proportion of the fees?

A. Perhaps not in the particular case, but nevertheless it is evidence of the attention he gave to the business. If in every case Judge Hughes had employed perfectly competent counsel to assist him, and they had done the work thoroughly and well, and we had not been called upon to pay them, perhaps we would have had no ground of complaint. His neglect would have been supplied, but I considered at the time and consider now the frequent association of other parties with him was caused and was an evidence of his neglecting the business, although in the particular case.

Q. How did that damage the firm if the client paid the particular counsel?

A. It did not damage the firm in the particular case, but it was evidence of the damage the firm received in other matters.

Q. New business that would come to them.

A. New business that would come to them. Part of the time it was. After the firm was dissolved there was no question about new business, of course.

Q. I am speaking about the dissolution of the firm; how could that injure the old firm—the fact that he employed counsel to assist him in conducting causes belonging to the firm, through the Supreme Court?

A. I will answer that by stating a hypothetical case.

Q. Certainly.

A. I will say that if you, M'r Henkle, had a partner who we believed to be competent and able and who claimed to be able and competent to manage law cases, and you found that in your judgment he was neglecting his business, and that whenever a case came up for trial he did not try it, or did not take any important part in the trial, but mangaged to get some volunteers in or some other attorney in, whether after a considerable run of that kind you would not deem it pretty conclusive evidence that your partner was neglecting his business and was not doing his duty to the firm, although in a particular case where the thing arose the work might have been well done by somebody else? You would not consent to remain in partnership with a man who was habit-
175 ually doing that thing. You would regard it as evidence of his neglect, I think.

Q. I am talking about the firm after it was dissolved, when each

individual had no manner of interest in the individual reputation the other members were making for themselves.

A. That would not at all alter the matter of neglect. The question with me is whether you would regard your former partner who was closing up your business, was doing it not in a proper manner, but procuring it to be done by others in a way sometimes satisfactory and sometimes not. I might say in this connection that I consider that an attorney has no right to associate other attorneys with him without the consent of his client.

Q. Suppose his client does consent?

A. Then there is no objection on that score.

Q. Suppose his client pays the attorney?

A. Then there is no objection on that score, on the mere ground of payment, if the client pays.

Q. After the firm is dissolved, have the old partners any right to object to it?

A. I think they have; I think the old partners have a right to insist that a man himself shall do it.

Q. I want to ask you if you can put your finger upon any case that was lost in the Supreme Court of the United States by reason of the neglect of Judge Hughes, or the want of ability in the management of the case.

A. I would rather not answer that question. Judge Hughes is dead, and I would much prefer that the testimony should be confined to general allegations and general facts; but if you insist upon it, I am ready to answer; but to say that a lawyer lost a particular case by his particular neglect is a pretty severe criticism on his conduct; but I am willing to answer the question.

Q. I have no desire to have you state anything that is a matter of delicacy to you.

M'r ROANE. Still we have no objection to the witness stating.

By M'r HENKLE: If you are willing, I have no objection to your stating, but I do not want to press you.

M'r PIKE. You had better withdraw the question.

M'r HENKLE. He can answer it or not, just as he chooses. He says he prefers not to answer it, and he need not answer it unless he chooses.

176 M'r PIKE. I think you had better answer it, then.

M'r HENKLE. Very well; let him answer it.

A. I think an answer to that question would involve so many matters, purely of judgment and opinion on my part, that I would rather not answer it as applied to specific cases and particular inefficiencies.

Q. I do not desire you to do so unless you wish.

A. As I say, it would draw in serious issues; no human being has been able yet to say how or why a case was lost in the Supreme Court.

Q. No; I think so myself.

A. But I do not wish to state that I cannot point out individual cases of neglect of business on the part of Judge Hughes. I would rather not do so.

Q. Of course we all know Judge Hughes very well. It is a fact that Judge Hughes was always a little negligent. Like some of the rest of us, I suppose.

A. I have no objection to stating my opinion of Judge Hughes' professional attainments or abilities in that way. In a general way, it took me a long time to find out exactly what sort of a man he was. He always made a considerable demonstration of attending to business.

He was always fond of talking about his business, and was always very ready with his tongue, but during the last years of his life he had an unconquerable aversion to reading or writing. It was almost impossible to get him to read a paper, or to look at a case, or do any writing about a case.

Q. He sort of fell back on his experience and years, and expected his juniors to do that sort of thing; though he regarded as his juniors, I mean in years.

A. He undoubtedly expected somebody else to do the work, and gradually more and more seemed to be, as it were, entirely incapable of fixing his attention upon business for any time, and acquired more and more aversion to what I would call business, because he imagined he was attending to business when he was talking about his cases to his clients and others, and conversing in a vague and general way, but it seemed almost impossible for him to come right down to his desk to sit down and read anything or write anything. I think I do him no injustice in stating that in a general way.

Q. That applies to his history for years before the dissolution of your firm, as well as subsequent to it?

177 A. Not so much so; it was a growing and increasing thing with him. When I was first in partnership with Judge Hughes I used to think he was a pretty hard worker. I do not think he did as much work as I gave him credit for when I came to know him better afterwards. But his way of talking about his work would lead one to suppose that he was vastly more industrious than he was actually, but still in the early stages of the work he did a great deal more work. He used to work a great deal on briefs, and at times he would exhibit great energy, but there was a gradual falling off until it finally amounted to almost an aversion. The last two years of his life it was almost impossible to keep up a connected conversation on any business matter of five minutes together; he would insist on talking about something else.

Q. I understood you to say that after your return from Europe, in 1872, that you assumed charge of the business in the Court of Claims?

A. Yes, sir; I returned in July, when it was vacation and the court did not meet until December. I then resumed to some extent—not to the same extent I did before or ever have since.

Q. Your health was not so good, and you had not the same capacity for labor you had before?

A. No, sir; my health was not so good, and I do not propose to use it to the same extent.

Q. Then you say Gen. Denver assisted you?

A. Gen. Denver since that time has done as much, if not more.

Q. In what class of business is he?

A. In Court of Claims cases; in the preparing these cases and conducting correspondence in looking up business and seeing that cases are got ready for trial, and all that sort of thing.

Q. Has the general been in the habit of arguing the cases in the Court of Claims?

A. I think he has argued quite a number.

Q. How many?

A. It is difficult for me to say. I know that he has either argued, or submitted without argument, a great many; I think twenty or thirty.

Q. Any of the cases referred to in this statement of M'r Roane?

A. I think so.

178 Q. Take the case of Tyler; did he argue that?

A. I cannot answer specifically; my memory is not good enough

in regard to particular cases. I could not identify a single case that Gen. Denver has argued, but I have no doubt, from my general knowledge, that he has argued several.

Q. Did you ever employ counsel to assist you in the Court of Claims?

WITNESS. Do you mean firm cases?

COUNSEL. Yes, sir.

A. I do not remember that I ever employed any counsel to assist me; I have been associated with counsel frequently, but not when I employed them myself.

Q. Where your partners employed counsel to assist you, where were your counsel of record?

A. Very frequently where I have gone into the case—still those have been my own cases—I do not remember any firm cases in which I have had any help outside of the firm; yes, there have been some firm cases where our clients have employed other counsel, but not many.

Q. You do not consider those cases were neglected or badly managed because other counsel were associated with him in the trial of them?

A. Oh, no, sir; especially where the counsel were competent.

Q. You did not consider that as any reflection upon your reputation as a diligent and attentive lawyer to your business, did you?

A. Not in the least. No lawyer ever lived who did not have associate counsel with him frequently. That, in itself, I regard as no reflection upon anybody, and I do not mention it as any reflection upon Judge Hughes—the mere fact that he had associate counsel with him in cases.

Q. I understood you to say, however, that it might be construed into neglect of his business?

A. Yes, sir; it might be under certain circumstances, and so it might be in my case.

Q. It ought not to be so construed in your case anyhow?

A. It has not gone to that extent. I do not know but what I may fall into it as I get older. I will tell you plainly that if I did not argue a case in court, cases that I ostensibly had charge of, and always got somebody else to argue them, and managed to get other counsel
179 associated with me, and that, with other facts, showed that I was not attending to business, I think it would give to Gen. Denver very just cause for complaint.

Q. If you had a very important case to argue, however confident you might be of the thoroughness of your preparation and your competency to argue and to do justice to your client, if you thought you client distrusted your competency and wanted somebody else, you would think it your duty to call in somebody else?

A. I should consider it his duty and my duty to consent to it. I do not think there is any difference of understanding among the lawyers in regard to that.

A. No, sir; I reckon not. I am always very glad to have associate counsel.

Q. The Burns case, in which Carpenter was employed, was an important case, was it not?

A. Yes, sir.

Q. Were the questions difficult ones?

A. Yes, sir; nice questions.

Q. There was no mismanagement in employing an eminent lawyer like M'r Carpenter to assist in a case of that character, was there?

A. Oh, none at all. The mere employing of an associate counsel, getting his services, had nothing improper in it whatever, I will state,

with one qualification. I do not think Judge Hughes had the slightest right to pay associate counsel out of the funds of the firm without our consent.

Q. You do not say he did?

A. I do not say he did; I said if he did.

M'r PIKE. The books will show.

M'r ROANE. I wanted to make a statement in the beginning about that. I think all the gentlemen will be satisfied in regard to it when I make the statement.

By M'r HENKLE. Let me ask this question in that connection: State whether, if Judge Hughes had distrusted his ability to conduct an argument with the force that it was entitled to before the Supreme Court—whether it would not have been his duty to call in counsel whom he thought might do better, even if he was to be paid out of the fees coming to the firm from the case?

A. I do not think he ought to do so without the consent of his partners; it is rather a matter of opinion than fact.

Q. Did he ever do so without the consent of his partners?

180 A. If he did it in that case—I do not mean to say that he did it—if he did it in that case, he did it without the consent of his partners.

Q. You do not say the firm paid in that case?

A. No, sir; I do not say so.

Q. I want to ask you now whether Judge Hughes did any business in the departments?

A. I do not think that in the last three or four years of his life he did much, if any, business in the departments. I had a separate office from Judge Hughes, and was not in very constant communication with him; frequently I did not see him for a week at a time, or two weeks at a time. I only infer that he did not do business of that kind because I never knew of any results of such business. My information on that point is got at negatively, I may say, from finding things were not attended to.

Q. This is a question between partners, in which they raise the question as to who are entitled to most fees, and that the result of General Denver's practice in the departments—you say you cannot refer to results. Now what results do you remember from General Denver's labors in the departments?

A. I cannot specify without the case-books before me.

Q. No more than you can of Judge Hughes?

A. I cannot specify; I have not attempted to specify in Judge Hughes' case; I cannot specify in General Denver's case without the books before me.

Q. You do not know but what he did as much business before the departments as General Denver did?

A. In the sense of absolute strict knowledge, I may say I do not know it, but from all those sources and means of information from which people make up their opinions I have not the least doubt it is so.

By M'r Roane:

Q. You mean since the dissolution; you do not mean in the early period?

A. No, sir; as I said, Judge Hughes did a great deal of work, and there were a great deal of results from his labor in the earlier days.

Q. M'r Roane wishes me to ask you, referring to the Hunton suit,

whether Judge Hughes had not interposed a separate defense on his own account?

181 A. Judge Hughes filed a plea separately—the same plea that General Denver and myself filed—but severed in that way as I think General Denver and myself also severed. I am informed he had different counsel. General Denver filed a separate plea, and I filed a separate plea, and Judge Hughes filed a separate plea.

Q. Do you happen to know whether he meant to make a separate and distinct defence from you in that case?

A. I do not like to go into that matter at all. My understanding from all the parties was that he really did not intend to make any defence at all; the inference I got from letters and from various sources was that he felt that his interest rather lay with the other side.

Q. He felt that the plaintiff was entitled to recover?

A. Yes, sir, or ought to recover, and was inclined to co-operate with him, as I understood, in obtaining a judgment against the firm, I suppose, and I inferred from the same means that he could relieve himself in some way or the other. I never did understand the theory of it exactly, but that was the impression I had. I remember that was one of the strong inducements I had to compromise the case—for fear that Judge Hughes had made such admissions as would enable them to procure judgment against the firm, he being of the opinion that it was a debt that the firm ought to pay.

Q. Do you know why that was his opinion?

A. I could not tell you that; I have a theory, but it is a conjecture merely, and I would rather not state it.

Q. Didn't you regard the consent of M'r Roane, as executor of Judge Hughes, as necessary to enable you to compromise the case?

A. No, sir, not at all, excepting for the reasons I stated. I preferred his consent, of course.

Q. M'r Roane's view of it is this: not that the surviving copartners would not have a general right to settle the partnership business, but that here was a case in which a suit was brought in the lifetime of all the partners, and the partner who was afterwards dead made a separate defence, severing his defence from that of his copartners—whether in that case he would not, if the copartners attempted to compromise it, whether the executor would not be a necessary party to the compromise.

182 M'r CASEY (arbitrator).-The suit would have abated as to him, and would have been continued against the surviving parties.

M'r PIKE. It is a mere question of opinion; a question of law——

M'r CASEY. It would not have continued against him; it would have been continued against the surviving partners alone.

WITNESS. That was unfortunately so. We wanted very much to have M'r Roane made a party defendant.

M'r CASEY (arbitrator). Let me understand; is there any material fact about this settlement that enters into the controversy? I understand it is agreed by all parties, and the money paid, and that there is no disposition to open it, and why not let it rest?

By M'r HENKLE. This is the question: It was said that $4,500 was paid to compromise this suit. On yesterday the question was partially opened as to whether Arthur Denver should not have paid the one-half of that sum.

WITNESS. Paid it back to us; you don't mean paid it to the plaintiff in that suit?

M'r HENKLE. The arbitrators will remember that $14,000, one half of

the fee, was paid to Arthur Denver. Now, some lawyer at New Orleans (M'r Hunton) claimed that he was entitled to one-half that fee, for the reason that he had sent the case into Hughes, Denver & Peck's hands, under the agreement by which he was to have one-half of the fee, and that being refused to him, he brought suit. Now, then, the surviving members of this firm compromised the suit; paid $4,500, when M'r Arthur Denver had received one-half of the whole fee. What M'r Roane claims is that Arthur Denver, in that settlement, should have contributed the one-half of that $4,500; and that the firm, the surviving members of the firm, are not entitled to charge him or his estate with the one-third of that whole sum.

M'r CASEY (arbitrator). Hadn't you then better show what the understanding and agreement and arrangement between M'r Arthur Denver and the firm was?

WITNESS. I say this, that I do not know what the agreement between M'r Arthur Denver and the firm was.

M'r HENKLE. I want to say this, that we do not claim any action of the referees in this case, in which Arthur Denver is not a party, could bind him; but I had supposed this was a general settlement, and
183 a fixing of the basis of future settlements between the members of this firm, so that they may have no future litigation nor occasion for arbitration. Now, then, M'r Roane claims that M'r Arthur Denver ought to account to the firm for one-half of this sum of $4,500. Then the surviving members of the firm claim, as I understand it, that he ought not.

WITNESS. Oh, no; we do not. I make no such claim.

M'r HENKLE. I thought you did.

M'r CASEY. Oh, no; I did not so understand it. What I want to know is, whether you are claiming we should charge them with Judge Hughes' share for that $2,200 which you claim Arthur ought to pay, or whether you merely claim it as a subsistent debt due to the firm?

M'r HENKLE. It was only with the view of the referees deciding as between the partners themselves that it was the duty of the surviving members of the firm to collect from M'r Arthur Denver this $2,250, so that Judge Hughes' estate might have the benefit of it. Of course, if they should bring suit against Arthur Denver, and the case should be decided adversely to them, they would be discharged. It was only with this view; but M'r Peck says they do not claim that Arthur Denver is not liable, but I think he is.

Redirect examination by M'r Pike:

Q. You state the fee in the Duncan-Sherman cases was five per cent.?

A. Yes, sir.

Q. Do you know what their fee was; can you explain how they got the business—I mean generally?

A. They had some agents at Savannah.

Q. They were bankers?

A. Yes, sir.

Q. In New York City?

A. Yes, sir. There were some parties in Savannah acting for them at the surrender of the city, they supposing the cotton would be immediately given up. They regarding the whole seizure as illegal, went to these parties and, I think, advanced money to some of them, and made arrangements to conduct the cases for the parties. They soon found that they had got into rather a bad scrape, as the cotton, instead of being delivered in sixty days——

Q. Do you know what compensation Duncan & Sherman were to get? You were to get five per cent.?

184 A. It was a good deal more than that. I would rather not state the amount.

Q. Yes, just state it. If they employed counsel, I want to show they had some interest in employing them.

A. In these cases, I think it was about a third. It varies a little. They got about thirty-three and one-third per cent.

Q. They were not the owners of the cotton?

A. No, sir. They had powers of attorney from each agent to prosecute it under this agreement, by which they were to receive about one-third. They employed us as local counsel here, and employed several gentlemen in New York, and employed counsel in Savannah also; but the counsel at Savannah were subordinate to us.

Q. There were some questions asked you about General Davis and what services he rendered. I want to ask you if a great many people have not been paid in these Duncan-Sherman cases who have not rendered any service?

A. That was not a Duncan-Sherman case.

Q. No, I know that, but I speak of these cases.

A. I do not know who they have paid.

Q. Isn't it a common thing in all such cases that come before the departments or the courts in this District, of that sort, that people get paid who do not do anything?

A. There are a lot of people who get paid who render little or no service. We often have to pay them whether they do anything or not. I do not say, however, that I pay such men. I generally prefer to kick them out of the office. I am not a very popular man with that class of people.

Q. I want to know if it is not a very common thing for men who do not do anything to get the best pay?

A. It is a very common thing.

Q. Now, how in regard to General Davis' claim?

A. In regard to General Davis' claim, I do not know anything. According to his statement, it is all right; but according to the knowledge I derived from other sources, it is all wrong.

Q. You will probably have to compromise with him?

A. We will either have to pay him or compromise, I suppose.

Mr. DENVER. I have no compromise to make with him.

Q. Did you ask for a dissolution of the firm at any time?

A. Yes, sir, in 1869.

Q. Of whom?

185 A. I asked it of Judge Hughes. I desired to do it in a way that would be the least offensive, and asked Mr. Roane to communicate it to Judge Hughes.

Q. What was the cause of it?

A. I would rather not answer that question.

Q. Yes; I want an answer.

A. Well, a man always acts from mixed motives. There was no single motive.

Q. If it was not on account of his neglect of business you need not state it.

A. That was one of the reasons.

Q. That was one of the grounds upon which you wished for a dissolution?

A. That was one of the grounds, but I do not care to go into that matter.

Q. There has been a great deal of talk about Judge Hughes' attention to business in the Supreme Court. State whether Judge Hughes did or did not neglect the business in the Supreme Court.

A. In my judgment he did neglect the business in the Supreme Court.

Q. To what extent; much or little?

A. Very seriously, I should say.

Q. There has been something said about the tacit agreement by which each partner assumed certain business. Was there ever any distinct understanding that you were to do the whole business in the Court of Claims, and Judge Hughes to do the whole business in the Supreme Court?

A. I will state that the business of the Supreme Court for our firm was very inconsiderable. There was not very much of it. It was several years before we had any cases of any importance. Our entire business in the Supreme Court has been very inconsiderable. We have been very fortunate in not having a great many appeals taken to the Supreme Court.

Q. Did you voluntarily take the whole business on your shoulders in the Court of Claims?

A. I did it little by little. I didn't go in with the view of taking the whole business, but it gradually got shouldered on to me, and I did take nearly all of it, with the qualification I have stated.

Q. Not by virtue of any agreement?

A. No, sir; but I fell into that line.

186 Q. How fell into it, as a matter of necessity or choice?

Well, sir, the business in the Court of Claims is a business of routine; it requires a great deal of labor; I never knew a court in which the preparation of cases and the practice involves so much detail. I was perfectly willing to undertake it, and I did undertake it, and when I got into it, and got familiar with it, it was difficult to get out of it.

Mr. CASEY (arbitrator). You cannot depend much on the time of the trial?

WITNESS. When I got familiar with it, I will state that the practice of the Court of Claims, the detail, routine practice, is one with which very few lawyers are familiar. I do not suppose that there are more than a dozen lawyers in the United States familiar with the practice of that court. Having gotten into it, I was inclined to run the thing along in the same rut. I did this not from any agreement, but merely from the fact that I have stated, and from naturally gravitating towards it.

Q. Did you ever see that letter of the 13th of August, with General Denver's endorsement put upon it?

A. No, sir.

Q. Judge Hughes never showed it to you?

A. Never; I never saw the endorsement until quite recently, I believe. Mr. Holbrook got a copy for me, but I never saw it.

Q. There is a claim set up here for interest. Judge Hughes was behind with the firm for a good while?

A. Judge Hughes was behind for some six to twelve thousand dollars, I might say, for several years.

Q. Was there any interest charged him on it?

A. No, sir; as between partners we never charge interest. I should object to any claim being allowed against us for interest.

Q. There was no agreement to that effect between the parties?

A. There was no agreement; we never thought of charging interest;

Judges Hughes' account was for many years overdrawn very largely; his interest account, if gone into, would amount to several thousand dollars; I may overstate it.

By Mr. ROANE. Q. He denied the correctness of the books?

WITNESS. Of only small parts of it.

187 Q. Do you know anything about the case of the State of Texas against White & Childs?

A. I remember there was such a case.

Q. That was an original case in the Supreme Court?

A. Yes, sir.

Q. Do you know whether Judge Hughes attended to that case in the Supreme Court and argued it on the final hearing?

A. I only know that he assumed to have charge of that case, but what he did in it I do not know.

Q. Do you know how much it was for?

A. A large sum in United States bonds; that it was a claim that the United States had guaranteed.

Q. It was United States bonds direct, was it not?

A. Yes, sir; that is so.

ARCHIBALD ROANE recalled:

I want to make a statement in regard to the Burns case, and it is simply this: that the Burns case was settled during the absence of General Denver and M'r Peck in Indiana, attending to this Williams suit. I collected the money for the firm. I was acting for the firm. The money was paid over to me by General Burns. M'r Carpenter had left directions with Judge Hughes for him to collect his fee, and Judge Hughes had instructed me to collect M'r Carpenter's fee. General Burns paid over to me the fee of the firm, which, I think, was 25 per cent., and also the fee of M'r Carpenter, which I think was $3,000. Having received that money from General Burns, I charged myself with the whole amount received from him, including the firm fee and the fee of M'r Carpenter. When I paid out M'r Carpenter's portion of it, I credited myself for it, of course, and charged it accordingly on the books. And so it is in regard to the firm, as you will find it upon examination of the book. As it appears on the books, Carpenter is charged for $3,000 and credited for $3,000, and it would appear that it was paid out of the firm-money, but it was put on the books simply because Burns had turned the money over to me and I wanted to show the whole transaction. If you make a calculation, you will find the firm's fee and M'r Carpenter's fee altogether make up the amount I have charged myself with. The firm got its whole fee and M'r Carpenter got
188 his fee; that is the explanation of it. Anybody examining the books would suppose the firm had paid it.

*Testimony of James W. Denver.*

WASHINGTON, D. C., *August* 29, 1874.

Commission met pursuant to adjournment. Present, all the parties, with their respective counsel.

JAMES W. DENVER sworn.

Examined by M'r Pike:

Q. State in regard to the attention given by Judge Hughes to the business of the firm under the agreement for dissolution, and his history and his connection with the business from that time on.

A. The firm was commenced in 1865. It was interrupted for a while in 1866 and reorganized, the members being James Hughes, myself, and C. F. Peck. It was in all respects an equal partnership. There were no special limitations by which one was to have any benefit that another was not entitled to. Judge Hughes spoke of business that he had, or might have, in Indiana, and his desire to be in Indiana occasionally. No one objection was made to it. I spoke of it being necessary for me to be absent occasionally, and no objection was made to that. At the outset there was no special charge taken by any members of the firm of any particular branch of the business, each one attending to whatever business it might be necessary for him to attend to. One of the very first cases of any consequence that we had was that of Samuel Norris, which I took charge of exclusively. I got an act passed through Congress referring it to the Court of Claims, and attended to it before the Court of Claims, and no one else did any work in it at all except a little my brother attended to. He had just come to the place at that time. None of the firm attended to it. After a time I gradually fell into attention to business in the departments and before Congress, partly because I disliked office work. In these matters I was assisted occasionally by Judge Hughes. M'r Peck gradually fell into the control of all the Court of Claims business. I presume because it
189 suited him better. He knew nothing about the departments or Congress. The business ran along in that way till about the winter of '69 & '70. Judge Hughes had gone into the legislature of Indiana, and was absent a great deal; or he probably went into the legislature of '67 & '68, but he was there in '68 & '69 also.

ARTHUR DENVER. He was there in '69 & '70.

WITNESS. I am not sure as to dates. When he was here he gave very little attention to business. A good deal of dissatisfaction grew up in consequence of that neglect, and M'r Peck asked for a dissolution, which offended Judge Hughes very much, and he declared that he would have nothing more to do with him. And he wrote out——

M'r HENKLE. Do you remember when this was?

A. It was in the winter of 1868 & '69. The latter part of the winter.

Q. Is this the time you are speaking of now?

A. Yes, sir. Judge Hughes wrote out the terms of the dissolution, and it was agreed to by all the parties.

Q. That is a paper of March, 1869?

A. I believe it is March 18th, 1869. This is the last dissolution that I speak of; the only one that was reduced to writing. Some time after that, during the summer—the spring or summer of '69, I made an effort to sell out my interest. I made propositions to both Judge Hughes and M'r Peck. I saw as things were then going that it was impossible for us to get along quietly, and as partners ought to get along, and I was very desirous to avoid any difficulty whatever. Nothing came of my proposition, however, and I went out to Ohio on a visit to my family. While there I received a communication from Judge Hughes, which I think is dated in August—I am not sure—proposing that each one should be entitled to the one-third of cases "nearly finished" in the event of death intervening, and of other cases one-fourth.

Q. Had M'r Peck signed that then?

A. That was endorsed as it appears here, as accepted by M'r Peck. At first I was determined I would not sign it at all, but afterwards I did say, with a qualification, and that qualification was intended to cover not only the obligations in the way of debts due against the firm, but the services of each member of the firm as partners.

M'r HENKLE. Will you suspend just one moment; I do not desire to stop Gen. Denver from making his statement by giving his under-
190 standing of the import of the language employed, but I want to claim, and may claim, perhaps, that the language is not ambiguous, and no explanation is necessary.

M'r PIKE. You can reserve any objection, gentlemen, to anything.

WITNESS. I expected an answer from Judge Hughes to that paper, but I never received one.

M'r PIKE. You returned the paper to him?

A. Yes, sir; I did. He never alluded to it afterwards up to the day of his death; at least never mentioned it to me. I inferred from the circumstances that he regarded it as null and void, as of no effect. That is the impression that was left on my mind, and I certainly so regarded it. I never heard of that paper again until I received a note from M'r Roane, since Judge Hughes' death, enclosing a copy of it. I did not reply to it then, because M'r Roane and myself were on no terms whatever, and I did not then propose, if it could possibly be avoided, that we ever should be. I had for a long time urged a settlement of our accounts. Judge Hughes had largely overdrawn, and, in addition, the firm owed me a considerable sum of money.

Q. How much?

A. The original sum was $7,000. It was an obligation that we had given the National Metropolitan Bank, and Judge Hughes proposed to me that I should take that up and hold it against the firm, and that I should be paid out of the first moneys that came in the way of fees. I did take it up in that way, and he never showed the slightest disposition afterwards to pay it in any way whatever, and it was years before I got the money back. It is probably not worth while to go into details of this kind any further, to refer to specific things that occurred, unless I should be asked questions with reference to it. After M'r Peck was taken down sick—his attack was sudden and overpowering, and incapacitated him from attending to any duties whatever—it became necessary for somebody to attend to the business of the firm. I proposed to Judge Hughes that we would take the business in hand, and each one take up a portion of the cases that were most urgent, and attend to them in the courts. He said very well, he would do it. I went to work immediately. I found him doing nothing, and I begged of him to take some of the cases, and finally he agreed to take two of them,
191 but really only took one; that, I think, was Emma P. Sykes, a small case. He took the papers out with him, kept them two weeks, and returned them without the scratch of a pen. I had to prepare the brief myself in the mean time, because the case was on hand and I had to try it in the court. I urged him repeatedly to assist me, and while he never refused to do it, he never did do it.

Q. When was that?

A. It was immediately after M'r Peck was taken sick; in 1872. From the time M'r Peck had to give up business to the present time, we have disposed of nearly one hundred cases, three-fourths of which, I think, were disposed of at the term of the court then in session and at the next term. All the assistance that I had in attending to those cases was M'r McFarland's aid. He came over, on two occasions, and argued some of Duncan, Sherman & Co's cases in the courts. The briefs and everything had been made up before he came.

Q. By whom?

A. By me; E. P. Norton was employed to assist, but he never rendered any assistance. He was employed by some of the parties in inter-

est, not by us, but he really never rendered any assistance. My brother helped me some. I received no assistance from Judge Hughes at all, notwithstanding my urgent solicitation. The correspondence during this time on all cases was very large. It required as much time as the preparation of the cases themselves—the necessary correspondence of the office. In addition to that there were quite a number of cases before the British Claims Commission, twelve of which were firm cases, and the work, I think, was very heavy. The records make eight volumes like those, on that business alone. The only assistance that I received, with reference to them, was from my brother, who attended to the Haskins case. That was a case that we had had for some time before the War Department. It was originally under the directions of the officers of the War Department for $55,000. It was rejected by the War Department. General Davis had something to do with it there. It was gotten up again, and again rejected. It was then pending. We made an effort to get the Secretary of War to take it up, but he declined to do it at that time. Finally, when the Treaty of Washington was made with the British Government, he being a British subject, we made out a new claim.

Q. Who did that?

192 A. I went to Judge Hughes and told him that in consequence of the amount of work we had on hand and the magnitude of that case, for there was a large amount of material in it, it was impossible for me to attend to it, and if he could not attend to it we must get some one else to do it. He asked me who could be got. I told him that I thought Arthur would attend to it. "Very well," said he, "get him." "Well," said I, "he is right here now." We were standing by the safe in our office, and Arthur was sitting at the table. Said I, "Call him up here and we will mention it to him at once." We did so, and there it was arranged that he was to take that case and attend to it, and was to have one-fourth of the fee. He did take charge of it—he took the entire charge of it. No one ever did anything further in reference to it, except probably I filed some papers. He prepared the whole case, made up the briefs, did everything in it, and from that day until the time of his death Judge Hughes never mentioned that subject to me.

Q. He got an award of $103,000?

A. $103,000. The claim as it was before the War Department, made up under the military orders of the Government, was for about $55,000, and it became an entirely new claim, to all intents and purposes, under the Treaty of Washington and its reference to the joint commission. There was a great deal of additional testimony taken, and a good deal of correspondence, most of which will appear in that printed volume. I have made out a partial list of the cases disposed of after M'r Peck's sickness. I do not think it is quite full; I have not had the time necessary to make it more complete, but it embraces about eighty-six cases. Some of these cases were prepared before M'r Peck was taken sick, but not very many of them. Some of them were prepared in part, and some of them were nearly complete. M'r MacFarland, I think, attended to about a dozen cases in submitting them to the court.

Q. Argued them orally, do you mean?

A. Yes, sir.

Q. Those are all cases after M'r Peck was taken sick?

A. All disposed of after M'r Peck was taken sick.

Q. You do not mean that they were all disposed of while M'r Peck was sick?

A. I say since he was first taken sick.

Mr. PIKE. I think you said three-fourths were disposed of during that term and the next?

193 A. Yes, sir; I think more than three-fourths.

Q. You said after M'r Peck was taken sick Judge Hughes gave no assistance in any of them?

A. None of them.

Q. What had he given before?

A. None that I know of. I said he had done nothing in any of them. I will make an exception of the W'm M. Derby case, and the case probably which was the immediate cause of the breaking out of the quarrel between us. I had been working very hard, hardly ever getting to bed before one or two o'clock at night; had been begging him to assist me, but getting no assistance at all. I found one of our cases was going wrong. I found a notice to take depositions (there were conflicting claims in the case). A notice had been accepted, and no one about the office had been notified of it, so far as I knew, and our client had not been notified of it. I saw the acceptance was in M'r Roane's handwriting. I returned to the office immediately and made a search through our letter-books to see if M'r Derby had been notified. While I was engaged in that M'r Roane and Judge Hughes came in from a fishing excursion. I asked a question about that acceptance or notice.

M'r HENKLE. I would rather you would not state anything that occurred between you and Judge Hughes; anything that Judge Hughes said is not competent, I believe.

WITNESS. Very well.

M'r ROANE. Let him go on with his statement.

M'r PIKE. Of course any admission of Judge Hughes' would be competent; if there is anything incompetent the referees will exclude it themselves.

M'r HENKLE. I have no objection; I do not know what the evidence is; M'r Roane does not object; so go on, gentlemen.

WITNESS. Perhaps it may be as well not to mention it, and I will not do so.

M'r PIKE. You can state as to the neglect of the case, and any consequence of such neglect, as a matter of course.

M'r HENKLE. Go on, gentlemen.

WITNESS. I will go on if you desire; I asked if our client had been notified.

M'r HENKLE. What case was that?

A. The Derby case; the answer was not very definite; I then

194 remarked that the acceptance appeared to be in M'r Roane's handwriting; M'r Roane appeared to be touchy about it, and some words passed between Judge Hughes and myself, and he asked me what was in the depositions that had been taken; I told him that I had not read them, but I saw they were there, and it was evident our client had no information about it, nor had we been present; he then undertook to take me to task for not being more vigilant; I was in no humor for being rebuked at that time by any one, much less by him.

M'r ROANE. State if he did not tell you I had accepted the notice by his direction and in his presence, and what had been done by him.

A. Certainly; as soon as I made the inquiry both appeared to get excited and angry about it. I got very angry myself; on the next day he addressed me the letter of the 3d of May, 1873.

M'r PIKE. About Arthur?

A. Yes, sir.

M'r HENKLE. Is that letter here?

M'r ROANE. That is not in evidence.

M'r HENKLE. What is the substance of the letter, general?

WITNESS. It was requiring me to exclude my brother, Arthur, from the office.

M'r ROANE. That is not in evidence. There are two letters out of six. Six letters constitute the correspondence. Two letters are exhibited and the others are not. That is not among them.

WITNESS. I declined to do so. Then he addressed a letter to Arthur.

M'r HENKLE. Had we not better keep out of all that?

M'r PECK. He is not stating the contents.

M'r HENKLE. All I know, or, rather, all I desire, is to avoid any unpleasant thing, unless it is material to the case.

M'r PECK. That is not the object; I do not want to go into the contents of the letter. He simply states that he received the letter and that he answered it.

M'r ROANE. I do not want to go into the subject of the quarrel at all; it is not in the case.

M'r PIKE. We do not propose to go into it.

WITNESS. I replied to that letter, and that reply is on file. In that reply I demanded a full severance of all our relations. After two
195 weeks, I think it was, I received his answer, which is also on file, and in which he accepted my proposition, but said he would not meet me himself, but would appoint counsel. He intimated in that letter, too, I should sue him. I never proposed suing; I never wanted to sue; I never wished to bring our business before anybody else; I thought we might be able to settle it ourselves. He prepared a bill, I believe, to bring suit against me in chancery.

M'r ROANE. He never finished the bill; he commenced it.

WITNESS. He prepared it. I got frequent messages about it. He never came into the office; never had any communication with me personally after that second day of May, 1872. He never came into the office but maybe two——

M'r HENKLE. That was the time of your quarrel, May 2, 1872?

A. Yes, sir; he never came into the office except two or three times, and then not to speak to me, but to make himself as offensive as possible; one day he stood up by the door there and made faces at me. I ordered him out of the office.

Q. Did he give any other assistance in the Derby case, or do anything in it?

A. Nothing at all.

Q. State what attention he gave to the business in the Court of Claims between the articles of dissolution in March, 1869, and the time of M'r Peck's being taken sick—that was about three years—from 1869 to 1872, in March?

WITNESS. In the Court of Claims?

COUNSEL. Yes, sir; first I want to ask you about the Court of Claims.

A. I recollect of his making a motion for the court to enter judgment in the Asher Ayres case, but the court ordered it done without argument; and I have no recollection of his appearing in any other case during that whole time. That, I think, was after M'r Peck's sickness.

Q. You have no recollection of his doing anything in the Court of Claims during those three years?

A. No, sir.

Q. M'r Hughes was especially to attend to the business of the Supreme Court; what time did your business in the Supreme Court commence—that you first had business there?

A. I think our first cases in the Supreme Court was not before 1867 or 1868—that they went into court.

Q. What time did the attention to them begin?

196 A. I am not sure; I do not think there was any case tried there before 1867 or 1868, and maybe not before that time, but I do not think that we have ever had much, if any, over a dozen cases in the Supreme Court.

Q. How many, then, were argued and tried and decided?

WITNESS. If you mean by argument——

COUNSEL. I mean argument on the merits; the final hearing, I mean. How many cases were not dismissed, but taken up by the court and decided?

A. I refer to that number—not over a dozen. There was a number where notice of appeal was given, and dismissed before they ever went up. Some were dismissed after they went there; but of the cases that went to a hearing in the Supreme Court my impression is there were not over a dozen, but I can furnish the referees a list of them.

Q. I want you to state, as nearly as you can recollect, what attention Judge Hughes gave to the business of your firm in the Supreme Court after the dissolution of the partnership; that is, after March, 1869?

A. I could not state that very well. M'r Peck knew a great deal more about that than I did. I can furnish a list of them, which will probably be more satisfactory.

Q. Were they all attended to by Judge Hughes?

A. I think M'r Peck assisted some; I do not know. I did not give it much attention myself; I was there occasionally.

Q. After the dissolution of the partnership what attention did Judge Hughes give to the business before the departments?

A. I know of very little.

Q. Say between March, 1869, and the sickness of M'r Peck, first, to distinguish the two periods—from March, 1869, up to the time of M'r Peck's sickness, that is three years?

A. I cannot think of the case that he attended to.

Q. After M'r Peck's sickness?

A. None.

M'r HENKLE. Are you speaking now of the Supreme Court?

M'r PIKE. No, sir; the departments.

Q. Do you know anything about the case of the State of Texas against White & Childs?

A. Nothing that would be of any consequence.

Q. Do you know whether he attended to it on final hearing in the Supreme Court?

197 A. I do not; I know Childs complained very much to me at the time about it, but I know nothing really about the case.

M'r ROANE. You know that he attended to it in some stages of the case before the court, and was engaged there a good deal, and Childs had given a note for the payment for services, some $900 I believe?

A. I know that he and Childs had frequent conferences; Childs used to be there to see him frequently.

M'r ROANE. He argued it in some of the earlier stages, not at the final hearing.

M'r PIKE. Is there anything further that you wish to state, general?

WITNESS. Yes, sir; I wish to state that at the time referred to, when he came into my office and made himself so offensive, I told him that all I wanted in the world was a fair and equitable settlement.

M'r HENKLE. That is hardly competent.

M'r PIKE. No; nothing that Judge Hughes said.

M'r HENKLE. Or what he said to Judge Hughes?

M'r PIKE. I do not know that the statute excludes that.

WITNESS. I will let that go by. I present this list as the business on hand at the time M'r Peck was taken sick, and that I had it all to attend to.

(Papers introduced in evidence, and made a part hereof, and marked Exhibit A, J. W. Denver.)

WITNESS. In addition I will also present this list, handing paper referred to.

(Paper introduced in evidence, made a part hereof, and marked B, J. W. Denver.)

M'r PIKE. State if you knew of the fee Duncan, Sherman & Co. were to get in those cases in which they employed you.

A. I can only state my understanding of it, which was that they were to get fifty per cent.

Q. And they were to pay you five per cent.?

A. Yes, sir.

Q. They had an interest themselves in prosecuting the suits outside of yourself?

A. Yes, sir.

Q. Did you consider they were employing M'r MacFarland for you or for themselves?

198 A. For themselves; he was getting as much as we were.

Q. He was getting five per cent.?

A. Yes, sir, the firm to which he belonged; they were employed by Duncan, Sherman & Co., and were to get five per cent.; that is my understanding of it.

Q. You had a claim for it in your hands, the firm had, of Fuller & MacDonald. Is there any charge on your books against Fuller for a fee in that case?

A. There is an entry for a ten per cent. fee; that is my recollection of it now.

Q. That was not paid to you?

A. No, sir.

Q. Have you any charge against them besides that, after they settled that with Chipman & Hosmer; whether your firm had any claim against Perry Fuller?

A. Judge Hughes took entire charge of that matter. He had it in his own hand, and he made some arrangement with Chipman, Hosmer & Co., as he informed me, and as the books show, but I never knew anything more about it personally.

M'r ROANE. Is that known as Perry Fuller or Fuller & MacDonald?

M'r PIKE. Claim for feeding Indians, was it not?

A. I have forgotten what it was.

Q. That ten per cent. was paid to Chipman, Hosmer & Co.?

A. I know of no fee that they got but that.

Q. What I want to get at is, whether you had any charge against Perry Fuller after the claim was settled, your firm.

A. I suppose we ought to have had, for we attended to it, and we have the books to show there was some work done in the case by us. The entry on our book is for an agreed fee of ten per cent. or twenty, I am not sure which.

M'r ROANE. What was the amount of the claim?

A. $60,000 or $80,000; and there is another entry that an arrrangement had been made with Chipman, Hosmer & Co., who were to receive

an additional fee which was not to interfere with our fee; that is entered on the book.

Q. Then, according to your books, you would have a claim against Perry Fuller for the fee?

A. I should suppose so.

199 Cross-examination by M'r Henkle:

Q. M'r Peck testified, I believe, that he was taken ill on the 5th of February, 1872, and he had continued in the business of the Court of Claims up to that time during that term?

A. I think so.

Q. I see the first case noted here is the case of Elizabeth Abrams; judgment April 3d, 1872; that is the time judgment was rendered; had that case been tried before M'r Peck broke down?

A. I cannot answer that question positively, but I think not, for it would not have been standing before the court, probably—a claim of that kind.

Q. A plain case?

A. A tolerably plain case. It was one that was made a leading case in a class of cases.

Q. How long do the cases have to be prepared and ready for trial, and on the trial docket, before they can be tried in the Court of Claims?

M'r CASEY (arbitrator). About seventy days.

M'r HENKLE. After it is fully prepared?

M'r CASEY (arbitrator). Yes, sir.

M'r PIKE. That is the minimum?

M'r CASEY (arbitrator). Yes, sir; I am not sure that that rule was in force at that time.

WITNESS. It was not in force at that time. Nor has it been enforced in those Savannah cotton cases.

M'r HENKLE. Has not there always been some rule by which the case should be set down after it was ready for trial upon some docket there; some time before the trial?

WITNESS. If that rule had been enforced those cases would have been no more then ready for trial.

M'r CASEY (arbitrator). It was about that time the rule was made, but I cannot state whether it was enforced at that time or not.

M'r HENKLE. If that rule had been in force at the time, then this case must have been fully prepared and ready for trial before M'r Peck quit?

WITNESS. It was not in force at that term, and I know we took up some cases there and tried them without any briefs at all.

200 Q. Do you remember now of having given any labor in the preparation of that case of Elizabeth Abrams at that term?

A. I cannot say.

Q. The next case is that of William B. Adams, judgment March 4, 1872. Do you recollect that case?

A. No, sir; not specifically.

Q. You do not know whether you did anything in that case or not?

A. I suppose I did no more than was necessary, to watch it after it had been presented before the court.

Q. The next case is that of George W. Anderson, judgment March 4th, 1872. Do you remember about that?

A. That is about in the same category.

Q. The next case is that of Abraham Backer, judgment March 4, 1872. Is that in the same category?

A. Pretty nearly.

Q. The next case is that of Daniel H. Baldwin, judgment April 8, 1872.

A. I have a little more recollection about that case, because there was some work. Some correspondence connected with it.

Q. What was the state of preparation in that case when M'r Peck left?

A. I cannot state specifically. It must have been very nearly prepared.

Q. Did you argue the case?

A. I am not sure whether I argued it or whether M'r MacFarland argued it.

Q. That is one of the Duncan, Sherman & Co. cases?

A. Yes, sir.

Q. Then the Battersby and Cohen case, May 26, 1873. That is the next term?

A. Yes, sir.

Q. Are these all the judgments rendered at that term in 1872?

A. Oh, no, sir; they are mixed up there. They are just taken off the books in the order in which they were found there.

Q. Here is a case of Luke Christie; judgment March 4, 1872, and May 8, 1872. Do you remember that case? Was that one of the Duncan, Sherman & Co. cases?

A. Most all of those were the Duncan, Sherman & Co. cases.

201 Q. That judgment of Luke Christie, March 4, 1872, was that one of the Duncan, Sherman & Co. cases?

A. Yes, sir.

Q. Then, I suppose, M'r MacFarland attended to that?

A. I think not, from the date of the judgment.

Q. That is the same date of these other judgments you have been referring to?

WITNESS. It was returned to the docket, I think, and there was some——

Q. That was one of the Duncan, Sherman & Co. cases?

A. Yes, sir; here is a case of John S. Daniels, March 4, 1872.

A. That was argued by M'r MacFarland.

Q. Here is one, Dewitt and Morgan, April 8, 1872; who argued that?

A. I am not sure whether it was M'r MacFarland or myself.

Q. Was that one of the Duncan, Sherman & Co. cases?

A. Yes, sir.

Q. Here is another of Freeman's estate, April 17, 1872; was that a Duncan, Sherman & Co. case?

A. I think so.

Q. Was that argued by M'r MacFarland?

A. That I cannot say.

Q. James Foley, March 11, 1872; was that of the same class—Duncan, Sherman & Co. cases?

A. Yes, sir; I will just state here that M'r MacFarland was here two days, and attended to what cases he could, the court could hear in those two days. The exact cases that he disposed of I cannot now name.

Q. I suppose he could not have argued many cases in that time. I suppose you mean that he submitted the cases; called the attention of the court, and submitted the cases to the court?

A. He did what was necessary to be done.

M'r PIKE. The briefs were all in?

A. They were not all in, because some of them were argued without

briefs. My recollection is the Daniels case was one argued without briefs.

M'r HENKLE. Who argued that case?

A. M'r MacFarland.

Q. The case of William Hunter, April 8, 1872; do you remember that?

202 A. There are two cases there, William Hunter and Hunter & Gammel. One was argued by M'r MacFarland and the other by myself.

Q. Had the brief been prepared before by M'r Peck?

A. I do not think there was a brief in that case.

Q. Was that a case of law argument, or upon the facts?

A. Upon the facts. The court is generally very kind and obliging to attorneys who come from a distance, and extend courtesies to them that they would not often extend to resident attorneys.

Q. Here is a case of George W. Lathrop & Co., April 8, 1872; do you remember that case?

A. I think I tried that.

Q. Is that a Duncan, Sherman & Co. case?

A. Yes, sir.

Q. The William Lindon case, May 13, 1872?

A. I think I tried that.

Q. Is that a Duncan, Sherman & Co. case?

A. Yes, sir.

Q. Andrew Lowe, April 27, 1872; is that a Duncan, Sherman & Co. case?

A. Yes, sir. I think we were both present at that time.

Q. The Edward Lovell case, May 8, 1872; how was that?

A. I think I tried that myself.

Q. Is that a Duncan, Sherman & Co. case?

A. Yes, sir.

Q. Lovell & Lattimore, May 8, 1872?

A. I think that was the same.

Q. Here is the case of E. Cohen, submitted April 10, judgment April 10, 1872; who tried that case?

A. I believe I did all the work of trying there was about that.

Q. Was it submitted to the court without argument, or did you make an oral argument?

A. I do not recollect now; my impression is there was not much argument in it except the brief.

Q. L. DeGive, April 22d, 1872?

A. I attended to that; that is not one of the Duncan, Sherman & Co. cases.

Q. Did you argue that case?

A. Yes, sir.

Q. Orally?

A. Yes, sir.

203 Q. Was that an argument of the facts or the law?

A. A little of both.

Q. Here is a case of Annie M. O'Neill, April 15th, 1872. Do you remember that?

A. My impression is that M'r MacFarland argued that.

Q. Is that a Duncan, Sherman & Co. case?

A. Yes, sir, I think so.

Q. Mary Reilly, April 8th, 1872. Is that of the same category?

A. I am inclined to think it was.

Q. Richmond & Wilmot, April 22d, 1872. Does that belong to that category?

A. It is one of the Duncan, Sherman & Co. cases, but I cannot recollect distinctly; I think I attended to that myself.

Q. John Stevenson, April 15th, 1872. Is that a Duncan, Sherman & Co. case?

A. I think it was.

Q. J. J. Warring, April 8th, 1872. Was that a Duncan, Sherman & Co. case?

A. Yes, sir.

Q. John R. Wilder, April 22d, 1872, and Aaron Wilbur, of the same date. Are those Duncan, Sherman & Co. cases?

A. Yes, sir.

Q. Then there is the case of Gustav A. Wirth, February 11th, 1872?

A. That was not.

Q. That must have been argued before M'r Peck left; the judgment was on the 11th of February, was it not?

A. I do not recollect; my impression is I attended to that myself; I know that I had a great deal of correspondence about it.

Q. It must have been prepared before M'r Peck went away?

A. That was a Mobile case, and I am very sure I attended to that myself; he quit the 5th, and this is the 11th, only six days afterwards; I attended to a great deal of correspondence.

Q. Before he did quit?

A. Yes, sir; in a great deal of correspondence all the way through all the time.

Q. I believe that is all the cases, now, at that term, of 1872; now, at the next term, 1873 term, M'r Peck was at home?

204 A. Well, sir, he has not attended to a great many cases.

Q. He was here?

A. He was here, but he was not able to attend to a great many cases.

Q. You and he attended to them together?

A. He attended to one case which required an argument of not over fifteen minutes; at least he was not longer than that engaged in it; it was towards the close of the term, and it utterly prostrated him, and he did not get up from his bed for a week in consequence of it.

Q. That was towards the close of the term?

A. Yes, sir; he had attended to one other case, that of W. W. Cones; but there was not very much of an effort required in that case; almost the entire business of preparing the cases and getting them ready and presenting to the court devolved upon me; of course I consulted with him frequently; he was very familiar with the rules of the court and I was not; I had neglected to inform myself, and did not like to go into court, and it was a great labor for me to do it.

Q. What did the labor consist of mostly—taking depositions and preparing evidence?

A. Yes, sir; keeping up the correspondence of the office; that was enough alone ordinarily to have kept one man busy.

Q. That was a kind of routine business that could be done by a competent clerk?

A. No, sir.

Q. Did not your brother do a great deal of it?

A. Not very much; he assisted me occasionally; he wrote letters occasionally for me, until Judge Hughes began to find fault with it, and then I imposed as little of that work upon him as possible.

Q. M'r Roane suggests to me to ask you when he returned the letter

to Judge Hughes—the letter of August 13th, 1869, written to you in Ohio—with your endorsement upon it, making a qualification, as you claim. You say in your examination in chief that Judge Hughes never alluded to the subject to you afterwards. I want to know whether you ever alluded to the subject to him—whether you ever called his attention to it?

I did not suppose that it was my place to do so; I expected an answer to it; it never came.

205 Q. I am not calling for any conversation; I only want to know whether it was so or not. You do not know how he treated it—whether he treated it as an acceptance of the contract or not?

A. I can only judge of it from his subsequent conduct. He did not carry out any portion of the condition; he never was willing to meet any of the obligations that he owed as a partner in the concern, or in paying all money obligations of the firm.

Q. Did you have the note of the firm?

A. I took up the note of the firm.

Q. You did not take a new note of the firm for that indebtedness?

A. No, sir.

Q. That was a debt you were equally bound for as Judge Hughes and M'r Peck?

A. Yes, sir; it was a firm debt.

Q. And you took it up?

A. Yes, sir; at Judge Hughes' request.

Q. And held it for a long time before you were re-imbursed; you held that at the time you made this endorsement on this letter of August, 1869?

A. I think I did; I am not sure.

Q. Judge Hughes had considerably overdrawn at that time also, had he not?

A. Yes, sir; he had overdrawn at that time—overdrawn nearly $12,000.

Q. That is to say, above you and M'r Peck both together?

Yes, sir.

M'r Pike stated that he here desired to make a statement, with the permission of the arbitrators, in regard to an interview which he had held with Judge Hughes relative to a note held by M'r's Perrie Fuller. M'r Pike was then sworn.

ALBERT PIKE sworn.

What I desire to state is, that I hold that Judge Hughes used a claim of the firm against Perry Fuller for a fee, or extinguished his note to Perry Fuller for $2,000 and interest. Judge Hughes told me that Perry Fuller owed him—he did not say the firm—more than the amount of that note, and therefore he had refused to pay it, and it had been agreed to be given up to him. In the summer of 1873 I presented

206 Judge Hughes a note executed by him to Perry Fuller in 1866 or 1868; and Judge Hughes told me that Perry Fuller owed him for services a considerably larger amount; that the note had been once presented to him in Perry Fuller's lifetime by M'r Hannegan; and he had told him that Hannegan had agreed the note should be given up to him, and that he considered it settled; and that he would not plead limitation, but he considered the note paid and settled. General Sanborn told me about a month afterwards, in talking with him incidentally about the matter, that Judge Hughes stated to him that Perry Fuller

owed the firm of Hughes, Denver & Peck a larger amount than that note, and that it was settled in that way.

I spoke to the executor, and did intend to present the note, and would have presented it if M'r's Fuller could have found it; but expecting to compromise it, and believing if the executor, as his duty would properly compel him to do, would plead limitation, I could not collect it, but thought it might be compromised, and that is my object now, to get her something.

By M'r HENKLE. You considered it and treated it as a claim against Judge Hughes' estate?

A. Yes, sir.

By Gen. DENVER. State whether you knew at the time you presented it that the firm had ever had any business transactions with Fuller?

A. No, sir; I did not know it then; I did not know the firm had had anything to do with Perry Fuller at that time.

By M'r CASEY (arbitrator). State whether Judge Hughes claimed in the conversation that there had been any act between him and Fuller, or anybody acting for Fuller, by which the one debt had been set off or extinguished by the other.

A. He did not say to me that he had ever talked with Fuller on the subject at all; he told me that M'r Hannegan had presented the note for M'r Fuller in M'r Fuller's lifetime, and told Hannegan how the matter stood, and Hannegan agreed the note should be given up to him; he did not say whether M'r Fuller had anything to do with it.

Q. The reason why I ask the question, you will see; and I want to advertise the other gentleman that one of the doctrines of the
207 set-off is that mutual debts existing do not extinguish each other; one may die by the statutes of limitation.

M'r PIKE. The civil law doctrine is that they do; the common law doctrine is that they do not.

J. W. DENVER recalled.

I wish to state further that for a long time before Judge Hughes' death I had been endeavoring to get a settlement of our affairs, but never succeeded. After his death we got money enough in hand to square the accounts of firm. I was informed that M'r Roane wanted some money very badly, and I declined to make any partial payments, insisting on a full and final settlement as I had done before.

By M'r HENKLE. Are you speaking of conversations with M'r Roane?

A. I am speaking of facts that occurred. M'r Mattingly had been sent to me by Judge Hughes in his lifetime, demanding money, which I refused to pay over until a full settlement should be made. I insisted on the same thing after Judge Hughes' death, and when M'r Peck stated to me that it was for the purpose of meeting preferred debts, I assented to the payment of that amount, but without any idea on my part that it was any settlement of anything.

By M'r PIKE. You might state what authority M'r Arthur Denver had in making up those accounts.

A. His authority was just to adjust the books; nothing else. No settlement was made about it.

Q. He had no authority to make any settlement?

A. No, sir; only the adjustment of the books.

Q. Do you know what fee was agreed to be paid in Hot Springs case to your firm? You were employed by Gaines, were you not—Belding's heirs?

A. Yes, sir.

Q. Do you know what fee was agreed to be paid—what compensation?
A. I do not remember.
Q. Was it a money fee?
A. It is a contingent fee.
Q. Of an interest in the property?
A. Yes, sir.
Q. You do not know how much?
A. My impression is that it was either one-sixth or the fourth; I do not know which.
208 Q. You know the nature of the case?
A. I know something about it.
Q. Do you know that it is a claim under pre-emption?
A. Yes, sir.
Q. It is a claim of title?
A. It is a claim for land about which there is an old controversy.
Q. It is a claim for the Hot Springs of Arkansas—160 acres, under the pre-emption law of 1834?
A. Yes, sir.
Q. Do you know what other claims there are?
A. The Rector case.
Q. Do you know what that is?
A. That is, I think, under a "New Madrid Float," as they were called.
Q. Do you know when it was made?
WITNESS. I do not.
M'r PIKE. I suppose there is no objection to my stating that it was in 1820.
Q. There is another claim of Hales; do you know what that is?
A. I think Judge Casey has a claim——
M'r PIKE. I suppose we might state that that is a pre-emption of 1814. Then comes the Rector claim of 1820; then comes Belding's claim, which is the claim of Hughes, Denver & Peck, under the pre-emption law of 1834.
By M'r PIKE. There was a case of Maddox, you had once; do you know anything about Judge Hughes receiving a fee in that; I mean a separate fee for himself?
A. I do not.
Q. You do not know anything about that?
A. No, sir.

ARTHUR S'T CLAIR DENVER sworn.

By M'r Pike:

Q. What time did you go into the office of Hughes, Denver & Peck?
A. In June, 1866.
Q. You have remained there ever since, have you?
A. Yes, sir.
Q. You might as well state, in the first place, your connection with the Haskins case.
209 A. Some time in February, I think it was, 1872, Judge Hughes and General Denver requested me to take up that case and prepare it for the commission. The general said that he had no time to do it, and he and the judge were talking together, and they called me to them and told me to take it and they would give me one-fourth of what they made out of it.
I then went to work on it, prepared the case, and on examining the papers I discovered there could be a large claim made there for which

no claim had ever been made. The claim as originally presented was for a little over $55,000, as presented to the War Department, and that was whittled down by the commission up there to something like $44,000, and that was the claim which was in contest before the War Department. It had been rejected some three or four times by the Secretary of War, and I had a great deal to do with it in the War Department. Examining the papers I discovered that there was room to make a large claim in addition to what was already presented there, and in preparing I made it out for all that he was entitled to. In doing so, I threw aside the statements of the other two cases that had been before the departments, and made a new claim of it entirely on a different basis. I went on and attended until it was closed. I did everything that ever was done in the case. It has been stated here that Judge Hughes either did revoke this agreement, or endeavored to.

After I had prepared the claim—everything about it with the exception of taking some evidence of the rental value of the property; this was mostly for rents of cotton-presses—in conversation with him one day, in speaking about the business of the office, I mentioned to him there were a great many cases lying there which had been neglected, nothing at all had ever been done with them, and which I thought could be worked up and something made out of them, and mentioned, among others, the Warren Mitchell case, and proposed to him to take that on the same terms I had the Haskins case, and work it up. He told me to do so. This was several weeks after the agreement had been made about the other case. I commenced, on that, examining it, but had done nothing except to examine it to see the condition of it. A few days after, a week, perhaps, I met him on the street, and he told
210 me that he had been thinking over that matter, and that he would have to reconsider his agreement. That is all that ever occurred about it. We referred to the Warren Mitchell case. My impression is he mentioned both cases.

Q. What reason did he give?

A. The reason he gave was that he had promised that if any of this business of the firm should be let out, that M'r Roane and M'r Middleton should have an interest in it.

Q. And he said he would have to reconsider it?

A. Yes, sir; and that was the only reason given.

Q. Was he in partnership with M'r Roane and M'r Middleton then?

A. Yes, sir.

Q. Then, did you have any conversation with him on the subject of the Haskins claim afterwards?

A. No, sir.

Q. That was all that ever passed?

A. Yes, sir.

Q. You did nothing more in the Mitchell case?

A. No, sir.

Q. You were employed at the time this agreement of dissolution of partnership was made, in March, 1869?

A. I was in the office.

Q. From that time—from March, 1869, up to the time M'r Peck was taken ill, in about March, 1872, three years—state as far as you do know from your observation how much attention was given by Judge Hughes to the business of the firm during those three years, and where it was given?

A. He gave very little attention to the business; in fact, the greater portion of the time his office was in the other building. It was at one

time over Alexander's store, and he afterwards moved to the room above the office of Hughes, Denver & Peck, but he was very seldom in the office during the whole time. I do not think he spent half a day there altogether.

Q. Did he attend to the correspondence of the office at all during those three years?

A. I doubt if there is a half a dozen letters written by him; at least the letter-book will not show it. There are some written by M'r Roane; he was in the employ of the firm as a clerk.

M'r ROANE. It was not in the line of my business to do that.

211 WITNESS. I do not know what the line of your business was.

M'r PIKE. M'r Roane was in the office, and had charge of the books?

WITNESS. Yes, sir.

Q. Did you ever have charge of the books?

A. No, sir.

Q. Who had them after M'r Roane?

A. For some considerable time no one had them, and then they were put in the charge of M'r Holbrook, and he had remained in charge of them ever since.

Q. You never had the charge of the account-books?

A. No, sir; I kept memoranda from the time M'r Roane quit keeping the books up until the time M'r Holbrook was employed.

Q. Not in the book?

A. No, sir; I just kept a memorandum so that they might write up the book some time or other, but I refused to keep the books; I refused to have anything to do with them.

Q. You kept a case-book?

A. I kept a case-book until the quarrel between General Denver and Judge Hughes; at which time the judge notified me that he did not wish me to keep it any longer, and I quit that.

Q. During those three years from March, '69, to March, '72, state how much Judge Hughes, in the office of the firm, communicated with the members of the firm, or consulted with them?

A. He came around there occasionally, but I think there was very little consultation about business.

Q. He did not stay there at all?

A. No, sir.

Q. Did he have a room there, or was there a room there in which he had a desk, considered as his room?

A. I believe he claimed it as his room.

Q. But he did not occupy it?

A. No, sir.

Q. Did he do any work in that room?

A. I never saw him write anything there that I recollect.

Q. Then from the time M'r Peck was taken ill, until Judge Hughes' death, what did he do about the business of the firm, so far as you know?

212 A. Very little. He took charge of the Mitchell case. I suppose he did; it was prosecuted in the other office upstairs. I think he was at the Treasury Department several times in relation to the Perry case. I do not recollect now of any other cases.

Q. Who did do the work during the first three years after the dissolution—say from March, '69, to March, '72? State who did it and what kind of work it was, and whether it required all the time or not.

A. Yes, sir; there was an enormous amount of business there, and

nearly all of it was done by M'r Peck and General Denver. M'r Peck did nearly all of the Court of Claims business.

Q. During those three years?

A. Yes, sir; the greater portion of it.

Q. Do you know anything about the business in the Supreme Court at all?

A. There was very little business there; some few cases; I do not think there were more than eight or ten cases.

Q. You know nothing about the cases—how they were attended to?

A. No, sir.

Q. After M'r Peck was taken ill, was the work of the firm heavy?

A. Yes, sir; just about that time the great bulk of those Duncan, Sherman & Co. cases came on for trial, and General Denver had to take charge of them—at least he did take charge of them.

Q. Do you know why he did take charge of them—besides M'r Peck's being ill, I mean? I want to know if you knew of his attempting to get Judge Hughes to take charge of them or not?

A. I know he requested him to assist him several times.

Q. Did he get any assistance?

A. Not to my knowledge.

Q. So, then, from that time forward, until M'r Peck helped him again, who did the business?

A. General Denver did it all until M'r Peck's return to the office. I assisted him in a good many cases. Those cases tried where judgments were rendered after M'r Peck was taken ill—the briefs were nearly all prepared after M'r Peck left. I do not think more than eight or ten—perhaps not that—where the briefs had been prepared; they were nearly all prepared afterwards; I know, because I assisted in doing it.

213 Q. I wish you would state the nature of that case of Laplante, and your connection with it, and who did the work, and what sort of work it was.

A. The Laplante case was a claim for some three hundred bales of cotton seized at Atlanta, Georgia.

Q. Laplante was a Frenchman?

A. Yes, sir. I did all the work that was done here.

Q. State how you got into it and under what agreement.

A. It came into our hands at the time Mr. Turk was in the office, and the contract for fees was twenty-five per cent, of which Mr. Turk and myself were to have one-half.

Q. That was a contract at the——

A. Yes, sir.

Q. Who made the agreement?

A. There was no agreement at all until I made the agreement myself with Laplante.

Q. Between you and Hughes, Denver & Peck?

A. That was done by the firm and ourselves in our settlement.

Q. Was Judge Hughes a party to it?

A. Yes, sir; it is on record; stated in one of these contracts. Afterwards there were two other agreements made with Laplante about additional fees; and there were other attorneys employed, which I had nothing to do with. I did not employ them, and had nothing to do with them. I did all the work in the case, and after it was collected there was twelve and a half per cent. paid to me.

Q. Was it a troublesome case?

A. Yes, sir; it was a very troublesome case on account of the law as

it then stood. There was a number of those Frenchmen in New Orleans with whom Laplante, being connected in business in one way or another, had been engaged in various operations of blockade running and contracts with the Confederate Government, and there was a defence set up that he was a member of one of those companies manufacturing shoes. The company had been moved from New Orleans to Atlanta, Georgia, and we had to prove a negative there, which is a very difficult thing to do, and various other questions. One great trouble about it was tracing the cotton.

Q. What I want to get is, a claim came to the firm and you made a bargain with the firm for your interest, or how did it come—whether you were employed by the firm or by Laplante?

214 A. Well, the agreement I made with Laplante was in the name of the firm. My understanding was that we took the case into the firm.

Q. By the agreement between you and the firm, you were to have twelve and a half per cent.?

A. Yes, sir; that was our agreement with the firm. In our settlement with M'r Turk that was assigned to me and he took other cases. It was a case that no one in the office considered worth anything. We never could make M'r Peck believe it was worth anything.

Cross-examination by M'r Henkle:

Q. What is your profession? That of a lawyer?

A. I never was admitted to the bar?

Q. Did you ever practice law?

A. I never was admitted to the bar.

Q. You are a claim agent?

A. Yes, sir.

Q. Licensed?

A. I was, when it required a license.

Q. You practice as a claim agent.

A. Yes, sir.

Q. You have attended to land matters, have you not?

A. Oh, yes, sir; a great many, and business in all the departments.

Q. You know something about law?

A. I have been about a court all my life.

Q. Were you in the clerk's office?

A. I have been about the clerk's office and courts all my life—ever since I have been grown.

Q. You feel competent to manage a land case before the General Land Office, and argue law questions?

A. Yes, sir; I have met with success.

Q. Did you prepare any of the briefs of these cases?

A. Yes, sir; a number. Some testimony has been taken here with regard to a settlement made by M'r Roane and myself. I would like to make a statement about that. I was requested by M'r Peck and General Denver, together with M'r Roane, to settle up the accounts of the different members of the firm and other persons who had accounts there, among others M'r Roane and myself. There were a number of entries which various parties claimed ought to have been

215 made which had not been made, and all we did or attempted to do was to give a proper credit and to make the proper charges against those various parties and then to foot up the accounts and see how they stood. But after we did that, M'r Roane requested me to make a memorandum of the number and amount of claims outstanding against

the firm, that I knew of; it was nothing but a memorandum in pencil, which I did in his presence, and then he made some figures there to see how much would be left after that, after deducting the amount of outstanding debts on hand, and he asked me at the time if I thought that Mr Peck and General Denver would pay him over one-third of the balance; I told him that I did not know; that was something I could not say anything about; that I knew nothing about it; but I did not suppose there would be any trouble about it.

Mr. HENKLE. In making up the accounts of the individual members, you have charged and credited to each one one-third?

A. No, sir; we did nothing about that.

Mr. PIKE. There was no cash account with the firm at all?

A. No, sir.

Q. And no expense account?

A. No, sir.

Q. Had there ever been any cash account with the firm kept on the books?

A. No, sir; not on Mr. Roane's books.

Q. Nor an expense account?

A. No, sir.

Q. We mean each party had a separate account of cash received by him and cash paid out by him?

A. Yes, sir.

Q. And that is what you were settling up?

A. Yes, sir.

By Mr. HENKLE. You arrived at the conclusion that Judge Hughes had overdrawn so much?

A. No, sir; it was this: he was entitled to some credits which were not on the books; he should have been charged with some things which were not on the books, which had merely been kept by memorandum.

Q. Then you went into a statement of how much each one had drawn?

216 A. We only agreed that certain entries should have been made and certain charges against each member of the firm, certain things each one claimed should be credited to him.

Q. And you ascertained how each one stood with reference to the firm?

A. Yes, sir; we summed it up afterwards.

Q. Now, in summing it up, you charged each one with the amount he had received?

A. We did not balance the accounts at all; we only agreed upon the entries that should be made; that was all.

By Mr. ROANE. State whether the books I kept were not a continuation of the books of Mr. Peck.

By Mr. PIKE. No imputation upon you; I only wanted Mr. Henkle to know how the books were kept.

WASHINGTON, D. C., *September* 2, 1874.

Arbitrators met pursuant to adjournment. Present, the respective parties, with their counsel.

Examination of witnesses as follows:

MICHAEL DELANEY sworn.

Examined by Mr. Peck:

Q. You have been in the employ of the office of Hughes, Denver & Peck for some time?

A. Yes, sir.
Q. At what time did you commence?
A. In 1866.
Q. How long did you continue in that office?
A. About fifteen months, as clerk.
Q. Have you been familiar with the office since?
A. Oh, very.
Q. In what way?
A. I have had some business connection with the office, and in relation to some joint operations. I made the office my headquarters.
Q. Up till that time?
A. Up till now.
Q. Then you have been familiar with the office and its business?
A. Yes, sir.

217 Q. I want to inquire of you from about the middle of 1869. I wish to ascertain what attention Judge Hughes gave to the business of the firm after that time; say from the middle of March, 1869, to the same time in 1872; three years.

A. I did not see any particular attention that he gave to it; I never saw him about the office; his rooms were up above part of the time; I saw him go through the rooms once to go from the water-closet; I did not see him in that office; I did not mix in the affairs of the office; I had no conversation with him about it; I never saw him up there.
Q. Do you know enough about the business of the office to know what attention he gave to the cases; the claims they had on hand?
A. I did not at that time; I avoided all that sort of thing. I did not want to——
Q. After March, 1872, do you know what attention he gave to the business?
A. I did not see any; he might have been attending to it, but not to my knowledge; I did not see any attention given to it at all; I was under the impression that he was doing business for himself, and the firm was entirely disintegrated, and each man paddling for himself; in fact, I do not know what the condition of the firm is now; I have never asked any questions; I thought it was indelicate to do so.
Q. You knew nothing then about the business of the firm in the courts?
A. I did not; I am living in Virginia, and used to go back and forwards; I never had any conversation with him in relation to it; all I know is that I did not see him about the office at all the whole time I was there.

J. W. DENVER recalled.

By Mr. Peck:

Q. I want to ask Gen. Denver about those cases in the Supreme Court; I see some of them are marked out; December term, 1868; that ran up to March, 1869, of course; just begin with the December term, 1869; that is, cases decided at that term, is it not?
A. Yes, sir.
Q. Just begin there and state the cases.

218 WITNESS (reading from the list). "Riddlesberger against Hartford Insurance Company."
Q. Was that a firm case?
A. That was a firm case, and nothing came out of it.
Q. What was the decision?

A. We lost the case.
Q. Was it argued in the Supreme Court?
A. Yes, sir.
Q. Who argued it?
A. It was submitted on a brief.
Q. Who prepared the brief?
A. There was a brief prepared by a gentleman in Missouri, and an addition made to it by Judge Hughes of about one paragraph.
Q. That was in the December term of 1868?
A. Yes, sir.
Q. What next?
WITNESS. The next is "United States vs. Speed."
Q. What was that?
A. That was a Court of Claims case, argued by M'r Peck. It was a case in which the Court of Claims gave judgment in favor of Speed, and the United States took an appeal.
Q. Now you come to the December term, 1869?
A. Yes, sir.
M'r HENKLE. Are you inquiring as to the Supreme Court?
M'r PIKE. Yes, sir.
WITNESS. "Drehman vs. Stifle."
Q. What sort of a case was that?
A. Well, it was an appeal from the United States circuit for Missouri.
Q. A private case?
A. Yes, sir.
Q. What became of it?
A. That was lost.
Q. Who argued it?
A. Judge Hughes, and Moody, of St. Louis, attended to it. I think Moody argued it. I am not sure about that.
Q. What was the next?
A. "The United States vs. Ayres."
Q. Go on and state what became of the case.
A. That was attended to by Judge Hughes. There was a new trial asked for in the Court of Claims, and granted. Then the Supreme Court, upon motion, dismissed the appeal.
219 Q. It was not heard in the Supreme Court on its merits?
A. No, sir. (Reading again from the list:) "United States vs. Adams."
Mr. ROANE. That is Theodore Adams?
WITNESS. I think it was.
Q. What was that?
A. It was disposed of on a motion. There were several persons engaged in the argument of that—several other attorneys. It was regarded as an important case. Judge Hughes took charge of it there, for the firm. There were two or three other attorneys who argued it.
Q. He attended to that case?
A. Yes, sir.
Q. Was it disposed of on the motion?
A. It was lost, and Adams afterwards went to Congress and got an appropriation, which was paid.
Judge CASEY (arbitrator). That is the case that went up with the Fremont cases. Case of Reeside and several other cases decided at the same time, in which each party having different counsel. Mr. Fuller was concerned for Reeside.

WITNESS. He got judgment in his case—the Reeside case.

Judge CASEY (arbitrator). In the post-office case, but not in the Fremont case.

WITNESS. "Texas vs. Childs;" that has been gone over here before the referees.

Mr. PIKE. You do not know who argued that case of your own knowledge?

A. No, sir, I do not; I was not here.

Judge CASEY (arbitrator). Was that the appeal, or was it the original case?

Mr. PIKE. It was the original suit in equity.

Mr. ROANE. It is understood that General Pike argued it on the final argument, and that Judge Hughes argued it previously.

WITNESS. "Braun vs. Sauein." It was an appeal from the United States court under the revenue laws in Baltimore; Brent, Crittenden, and Hughes appear as counsel. The case was lost in consequence of the statute of limitation, December term, 1870.

WITNESS (continuing the reading): "McVeigh vs. The United
220 States;" that was argued by Curtis. The counsel reported in the case were Curtis, Brent, Wattles, Hughes, Denver & Peck.

Q. Do you know whether Judge Hughes argued it?

A. I am pretty sure he did not; Judge Moore and myself went to Richmond to attend to that case before the court there.

Q. It came up from Richmond, did it?

A. Yes, sir.

Q. Was it gained in the Supreme Court?

A. It was.

Mr. ROANE. I think Judge Hughes took part in the argument.

WITNESS. I do not think he did. I am not positive about it, but my impression is he did not.

WITNESS (continuing to read): "Crussell vs. United States." There is a continuance asked for that term and granted.

Q. Who gained the case?

A. We finally got judgment the next term.

Q. Who attended to it?

A. Judge Hughes, I think.

Q. Throughout?

A. I think so, in the Supreme Court; Mr. Peck attended to it in the court below.

(The witness continues the reading): "United States vs. Burns." That is a case that has already been explained.

Mr. PIKE. I looked at those books, Mr. Roane—Mr. Denver and myself—and found your statement was correct.

WITNESS. Then, in the term of 1871, the Crussell case was disposed of.

Q. The same case?

A. Yes, sir; it was continued from the term before.

Q. Was it argued, do you know?

A. I think there was some argument; I think Judge Hughes made some argument in it.

WITNESS. Now, here is a case that I knew nothing of; it is not on our books, and I never heard of it until I found it in the reports: "Easly vs. Kellogg et al."

Q. Where does it come from?

A. I do not know.

Mr. ROANE. I think that was a private case of Judge Hughes.

WITNESS. I think it must have been a private case of Judge
221 Hughes, because there is no mention of it on the books at all; that is all of that term—December term, 1872. Maddox against the United States. Hughes & Curtis counsel. That was an appeal from the decision of the Court of Claims adverse to the claimant, the Supreme Court affirmed the decision below.

Q. It was argued, was it?

A. Yes, sir.

Q. Argued by Judge Hughes?

A. It was argued by Curtis, and also, I think, by Judge Hughes.

WITNESS. (Resuming the reading:) "Sweeney vs. The United States" and Allen and others vs. The United States were appeals from the Court of Claims argued by Judge Hughes and decided adversely to the claimant. "Hume vs. Beals" was a suit from the district court, I think, and argued by Judge Hughes and Judge Moore. At least it was attended to by them. I think probably they both argued it. It was lost. That is all we could find in the reports.

Mr. ROANE. You have not mentioned the "Silvy" case.

A. I think the Silvy and Crussell cases we both argued at the same time.

Judge CASEY (arbitrator). They both embraced the same principles?

A. Yes, sir. I will just file this paper. Those that are scratched here on this paper were not firm cases. That case of Easby vs. Kellogg was not a firm case. The Speed and Floyd cases both involved the same principles, and both were argued by M'r Peck at the same time.

M'r PIKE. Is there anything else you want to put in?

A. Yes, sir. I want to make a statement that since our last meeting I have examined our books with reference to the Burns case, and find that the fee paid to Carpenter was as stated by M'r Roane; that the fee was paid by the claimant, and not by our firm. In the cases of McDonald and Fuller I stated my impression was the fee was either ten or twenty per cent. I find upon reference to our books that there is no fee mentioned at all.

Q. There is a memorandum on the books, however, that the arrangement with Messrs. Chipman & Hosmer was not to interfere with your fees?

A. Yes, sir; the memorandum was that it was turned over to
222 them, but not to interfere with our fees, but the fee was not stated. With reference to the Warren Mitchell case, I did a good deal of work in it myself. It was a very important case and I had no faith in Judge Hughes attending to it, and I saw that the evidence was all taken, and gave some of the notices and put the notice on the notice-book myself, or had it done.

Mr. ROANE. What notice do you mean?

A. On the notice-book of the Court of Claims.

M'r ROANE. I put one there myself.

WITNESS. I know it; it was afterwards taken off. Some other testimony was produced that was decidedly damaging to the case, and it went over for a year. I stated at our last meeting that I could recall no case before the departments to which Judge Hughes had given any attention.

M'r ROANE. You mean since the dissolution?

A. Since the dissolution, of course. I should have mentioned the Perry case, which had been rejected by the department; by the Auditor and Comptroller. Judge Hughes and M'r Middleton made an effort to

get it reconsidered, or get it referred to the Attorney-General for his opinion. He gave some attention to that case. I know of no other.

Q. That was a claim against the government?

A. Yes, sir.

Q. Did you get the money?

A. No.

By M'r ROANE: Q. Is it pending now before Congress?

WITNESS. It was rejected in the departments.

By M'r PIKE: Q. You are now trying to get it from Congress?

A. Yes, sir. In reference to the payments made at different times to Judge Hughes after the difficulty I had with him, none of them were made voluntarily. I had been endeavoring to get a settlement and he was doing everything in his power to avoid it. I was endeavoring to get money to square up the accounts, and he was endeavoring to get hold of all he could, claiming that he had a right to contribute or not contribute, as he pleased, to those debts. On one occasion he succeeded in forcing our clients to pay over to him $11,637.75 against the written protest of both myself and M'r Peck.

Q. When was that?

223 A. That was in September, 1872. It was at a time when there was money enough coming to have settled up the matters between us, and both M'r Peck and myself were insisting on; Judge Hughes resisting; and M'r Roane went over to New York and got the money.

Q. From Duncan, Sherman & Co.?

A. Yes, sir. In other cases the money that he claimed was paid over to him in order to enable our clients to get their money and get away, and it was never done voluntarily.

Q. That is, you mean, never with your consent?

A. Never with my free consent.

Q. State what time Judge Hughes took away his library from the office, or from the city. He had a library, did he not?

A. Yes, he had a library and a very good one.

Q. When was it brought here?

A. It was brought here in 1865 or '66, and placed in the office; maybe it was in the winter of 1865-'66.

Q. When did he take it away?

A. He sent it away either the fall of 1868 or the spring of 1869, I think.

By M'r A. DENVER: It was in the fall of 1869, I think.

WITNESS. It was sent away to Indiana.

Q. In the fall of 1869?

A. I think it was in the fall of 1869.

By M'r ROANE. It was in the fall of 1860 or the spring of 1870.

Cross-examination:

By M'r HENKLE: From what time was it you say there were no payments made to Judge Hughes by your consent?

WITNESS. Voluntarily?

COUNSEL. Yes, sir.

A. I am very sure there were none made after the time we had that difficulty in May, 1872.

Q. You claimed that you and M'r Peck were entitled to receive all the fees?

A. No, sir; I claimed, and M'r Peck claimed also, that all our accounts should be settled up—closed up, and the accounts squared, the books balanced, and the debts all paid before any fees were distributed.

Q. Was there in your articles of separation or dissolution
224 any provision as to who should collect from the clients the fees?
A. No, sir.

Q. Hadn't Judge Hughes as good a right to make the collections as you or M'r Peck?

A. No, he had not.

Q. Why not?

A. Because he had largely overdrawn, and we had a right to protect ourselves.

Q. Did Judge Hughes recognize the charge that he had overdrawn?

A. Yes, sir.

Q. Did he recognize the correctness of the books?

A. He did at one time, for a long time, until the time of this difficulty.

Q. The ground upon which you state he had no right to draw was that he was indebted to the firm, and a member indebted to the firm has no right to collect the debts of the firm?

A. No, sir; I did not hold any such thing nor said any such thing. You asked the question whether he had not as good a right as we had, and I said "no."

COUNSEL. I did not mean that he had a right to appropriate to his own use, but I want to know why he hadn't as good a right to collect from the clients as either of you?

A. The referees can determine that.

Q. I know; but you stated that it never had been done with your consent. I only wanted to get the fact as to whether there was any arrangement between you as to whether you should collect, and how that was; if it was simply because you claimed that the judge was indebted to the firm.

A. I have answered the question.

Q. That, I understand, is the reason—that he had overdrawn? Now you say that he forced Duncan, Sherman & Co. to pay him $11,000; that was one-third in one particular case?

A. Several cases.

Q. And you protested against Judge Hughes being paid any part of the fee in the case?

A. Until our accounts were settled.

Q. What did you want them to do with the money until your accounts were settled?

A. To hold it.

225 Q. To hold it themselves?

A. Yes, sir.

Q. You didn't expect it to be paid to you?

A. No, sir; I left a written protest directing them to hold it and not to pay anybody.

Q. You did not demand it yourself?

A. No, sir.

Q. Did you want your clients in all cases where you had earned fees, to retain them and not to pay them to you or M'r Peck until your firm had had an entire adjustment of their difficulties?

A. That was a particular case in which there was money enough to have settled up all our differences, which I was very anxious to have done.

Q. You collected moneys that were due the firm?

A. Yes, sir.

Q. You suppose that you had a right to, because you were a partner?

A. Yes, sir.

Q. And were liable to your copartners for any part of it due to them?

A. Yes, sir; and I did account for every dollar that I did receive.

Q. Judge Hughes would have the same right you had to collect from the clients and account to the other members of the firm?

A. The referees can decide that matter, if they think proper. They can dispose of that; it would be a mere question of opinion.

Q. You state you objected, and I wanted to know whether there was any reason?

A. Where a man had taken and spent all the money, and you could not collect a dollar from him, and he was in debt to you, you would be very apt to be looking out to protect yourself.

By M'r PIKE: Your objection was to his getting money and keeping it for his own use?

A. Yes, sir; certainly.

Q. He did not propose to distribute it at all?

A. No, sir; he did get it, and he did keep it, and he never would deliver it over.

Q. Was that $7,000 note still unpaid to you that you had taken up for the firm yourself?

226 A. No, sir; I think that had been paid before that; I had collected a fee and paid myself out of it.

Q. That was settled, then?

A. Yes, sir.

Q. How much was overdrawn at that time, do you know?

A. Between $11,000 and $12,000.

Q. At the time you got the money from Duncan, Sherman & Co.?

M'r ROANE. I do not think it was that much.

WITNESS. I do not remember the amount; that is my recollection of it now.

M'r ROANE. Besides that, one-third of that was his.

M'r HENKLE. I want to ask another question. Duncan, Sherman & Co. decided that they would pay to Judge Hughes in all their business one-third of the fees, didn't they, after that?

A. They never told me of any such decision.

Q. Didn't they?

A. I think they did; he had threatened them with a suit, and they told me themselves that they either had to pay it over in that way or go into a lawsuit there.

Q. What did they do with the balance of the fees?

A. They paid it over to Peck and myself.

Q. And have been doing that in the subsequent cases, haven't they—giving Judge Hughes one-third and you and M'r Peck the balance?

A. I do not remember as to whether it has been done in all cases or not, but I think there were only one or two small cases disposed of after that, and what there has been since.

A. I think so; I protested against it all the time; it was not done with our consent.

Defence here closes.

Witnesses in rebuttal were then called.

ARCHIBALD ROANE recalled.

By M'r Henkle:

Q. If there is anything you think of that you want to say, by way of rebutting, you can do so.

A. There are only one or two points. One is in regard to the Haskins

fee. I wish to say in advance that I recognized that M'r Arthur Denver performed the work in that case, and I have always said to him
227 that so far as I was concerned I was willing he should have compensation for the work. I never, however, agreed to the one-fourth. I never agreed to any particular amount. I think he is entitled to a compensation in the case, but I have here a copy of an agreement. I will say that I do not mean that that should be literally applied to him in this case. I will just read the agreement.

The witness read as follows:

(The agreement marked A. R. is filed herewith.)

I simply claim that, under this contract, M'r Arthur Denver was required to render service in closing up all the cases of the firm, if he worked upon them. I do not say that they had a right to require him to work upon the cases, but if he worked upon the cases, that he was required to render these services without any additional compensation. The Haskins case is not one of the cases upon this list. This agreement does not preclude any special contract being made with M'r Denver. I will state, in regard to the Haskins case, what the facts in the case were. The real history of the Haskins case was this: M'r Denver had been at work on the Haskins case for some time, and one day Judge Hughes came into the office, and he proposed that he should be allowed for compensation.

By M'r Pike:

Q. Do you know this?

A. From what Judge Hughes stated to me.

M'r PIKE. That is hardly admissible.

WITNESS. M'r Denver was permitted to testify to it.

M'r PIKE. He was a competent witness under the statute, and you are not. M'r Denver is not a party to this proceeding at all.

WITNESS. There are parts of it I know personally.

M'r PIKE. State those.

WITNESS. I will have to state the whole thing to show how far it is pertinent. M'r Peck was permitted to testify, and he is an interested party. He was permitted to testify as to what Judge Hughes said to him.

M'r PIKE. You always objected.

WITNESS. No, we permitted him to go on.

M'r PIKE. Go ahead; I do not care.

WITNESS. Very well; there were three cases; the Haskins case, the Warren Mitchell case, and the Hardee case; I think it was the Hardee case.

228 M'r DENVER. No; you are mistaken about that.

WITNESS. Well, then, at least the Haskins and the Warren Mitchell case; I thought there were three cases; Judge Hughes told us that M'r Arthur Denver proposed to work on these cases, and that he had given his consent, and told M'r Middleton and myself; he came up-stairs; our office was just above; he then said, in thinking over it, that he thought M'r Arthur Denver ought not to have interest in all of the fat cases of the firm, but that he was willing that he should have an interest in those cases if he at the same time would admit M'r Middleton and myself into them; accordingly, I think that day, or the next day, we invited M'r Denver to come up-stairs, and we had a talk over the matter; he refused to admit us into participation with him; I said I could not get the consent of M'r Peck; I held a power of attorney for M'r Peck at that time; he was in Europe; M'r Middleton said

he could get the consent of Judge Hughes; and Arthur said he could get the consent of Gen. Denver; at least he thought that if we could make the arrangement that that could have been done; but M'r Denver rejected the proposition; we reported the result to Judge Hughes that day or the day after, and Judge Hughes said then that he would withdraw his consent, and he went down-stairs, and came up immediately afterwards and told us he had withdrawn his consent. I want to say here, as I stated in the beginning, that M'r Denver is entitled to compensation in the case; he did the work in the case; almost all the work that was done in the case whilst it was before the commission; I will say, with reference to the compromise in the Hunton suits, in this contract it is expressly stated that one-half of all the fees which they may have received, or may hereafter receive of the cases in their hands, should be deducted the actual expenses of the same; that the contract with M'r Arthur Denver in those cases was to be paid after deducting the expenses.

By M'r ARTHUR DENVER: Q. Was the Laplante case in that controversy?

A. I do not know whether it was or not; there had been a private arrangement; the Laplante case, as I understand it, was claimed by the firm of Denver & Turk, and they dissolved their partnership and made settlement with each other, and the Laplante case was turned over to M'r Arthur Denver.

229 By M'r ARTHUR DENVER: Q. Is that in that contract?

A. I do not know about that; but I say even if it is not in that contract——.

M'r PIKE. It is very easy to look and see whether it is; because if it is not, the contract does not apply to it.

WITNESS. Even if it is not in this contract, I will state that in all the cases in which M'r Arthur Denver received his proportion of the fee he bore his proportion of the expenses; if he received one-half of the fee, he paid one-half of the expenses; if he received one-quarter of the fee, he paid one-quarter of the expenses.

Q. How do you know?

A. I was connected with the firm and had the settling of all the accounts; kept the firm books, and know this from personal knowledge, that the expenses were shared in proportion to the interest in the fees.

M'r HENKLE. I want to ask you if you remember when M'r Peck was taken sick?

A. I was at that time in charge of the books of the firm. I had no further connection with it.

M'r PIKE. I wish you would let M'r Roane answer that question. Ask him whether that Laplante case is in that list?

WITNESS. I will look at that and see. I suppose not, because it was not among the cases that this contract effects. The Laplante case belonged to Denver & Turk, and there was an agreement preceding this in regard to that.

M'r PIKE. The question is whether the Laplante case is in the list B, or C.?

A. I do not think that is in there.

M'r PIKE. There is the list, and you can see.

WITNESS. I will see. (Examining the lists.) It is not in the lists.

M'r Roane then read as follows:

Q. Then that Laplante case is under a special agreement subsequently to that?

A. Yes, sir. I have already stated, and it is not necessary to repeat,

that in all the cases in which he had an interest the expenses were deducted.

230 M'r PIKE. It affects the Haskins case, because, you understand, M'r Denver is to attend to the end of his life in settling of the business for nothing.

A. I have already stated that as M'r Arthur Denver had attended to the Haskins case, I thought he was entitled to receive compensation.

M'r PIKE. What that agreement amounts to is for the referees to decide. Your inference that he is bound to attend to the Haskins case is from the language of that agreement?

WITNESS. Yes, sir.

M'r PIKE. Where is the former agreement?

WITNESS. I can file a copy of both of them and of the settlement between M'r Denver and M'r Turk.

M'r PIKE. There has been a great deal said about the Laplante case, and it is referred to in that indorsement, and you might as well file them both.

By M'r HENKLE: State what was the condition of the preparation of the cases in the Court of Claims belonging to this firm of Hughes, Denver & Peck at the time M'r Peck was taken sick in February, 1872?

A. I stated in my examination-in-chief that M'r Peck had told me before he went to Europe that briefs had been prepared by him already in all the cases that were likely to be reached, and that most of the points of law had already been decided, and that nothing more was required than to submit the cases on the briefs.

Q. Do you know, of your own knowledge, what the condition of the business was?

A. I do not; unless I have the particular list before me; I might be able to say then.

By M'r PIKE: How far does your own personal knowledge of the cases go?

A. I had access to the books and I was in daily conversation with the members of the firm.

Q. You have stated that M'r Peck said that he had prepared the briefs in all the cases that were likely to be reached?

A. Yes, sir.

Q. And the points of law had been settled?

A. Yes, sir.

Q. And that it was only necessary to submit them on the brief?

A. Yes, sir.

231 Q. Do you know whether or not General Denver did not, notwithstanding that, have to give attention to them?

A. I know he did give some attention to them.

Q. How much?

A. I do not know how much; I went down into office and saw him at work on cases.

Q. Do you know, of your own knowledge, the condition of the cases that were in the Court of Claims?

A. I cannot say; I never knew accurately what their condition was; I knew the general condition, because I worked on those Duncan, Sherman & Co. cases myself, and I suppose I prepared fifteen or twenty briefs.

Q. Don't you know Gen. Denver prepared fifteen or twenty briefs?

A. I know he prepared some; I do not know how many; I prepared some twenty or thirty myself. There were some ninety-three cases from Duncan, Sherman & Co.

Q. When—at that time?

A. No, sir; I think most of the work was done before the dissolution. (A pause.) No, part of it was before the dissolution—part was before the new arrangement that was made with myself, when I was to attend only to the books.

Q. I mean after M'r Peck was taken sick?

A. I prepared none subsequent to that time.

Q. Do you know whether Gen. Denver prepared any?

A. I saw Gen. Denver at work on the cases; I do not know what he was at work on, but I understood he was at work on these Court of Claims cases.

Q. You do not know that he prepared any briefs?

A. I do not know of my own knowledge, but I have always thought that he did; I do not know that they ever came through my hands in any way; I would suppose that he did; I saw him at work on the cases; it was not my business to look at them.

Q. You kept the books at that time?

A. Yes, sir; I kept the account books.

Q. You know of the printer's bill being sent in after M'r Peck went away?

A. Oh, yes, sir.

Q. Were they brought in for briefs printed before M'r Peck went away or afterwards?

232 A. That I cannot say without reference to the books; I have no doubt General Denver prepared briefs in some of them; I saw him at work on them; of course, those cases did not come under my observation, and therefore I have no personal knowledge of the subject.

Q. You gave no attention to the cases in the Court of Claims after M'r Peck was taken sick?

A. None, except the Warren Mitchell case, which was attended to by Judge Hughes.

Q. The rest you paid no attention to?

A. No, sir.

*Report of referees.—Filed Oct.* 21, 1874. *R. J. Meigs.*

In the supreme court of the District of Columbia. In equity.

ARCHIBALD ROANE, EXECUTOR OF JAMES Hughes, deceased,
*vs.*
JAMES W. DENVER AND CHARLES F. PECK. } No. 3706. Eq. doc. No. 13.

The undersigned, appointed referees under and by virtue of the order of the court of the 7 July, 1874, beg leave to report that the referees chosen by the parties, A. A. Hosmer and Joseph Casey, having heard the parties by themselves and their counsel, and their proofs and allegations, and having disagreed as to the matters in controversy between the parties submitted to them by said reference and as to the award to be made in the premises: Thereupon they chose Thomas J. D. Fuller as the umpire in the case, and, after long and earnest consultation and repeated efforts, they are compelled to report that they are unable to agree upon an award—no two of their number concurring in a report or award on the premises.

They, therefore, respectfully pray that they may be relieved and discharged from the further consideration of the premises.

In witness whereof we have hereunto set our hands this 13th day of October, A. D. 1874.

JOS. CASEY.
A. A. HOSMER.
T. J. D. FULLER.

233 In the supreme court D. of C.

ARCHIBALD ROANE, EXECUTOR OF THE LAST will and testament of James Hughes, plaintiff,
*v.*
CHARLES F. PECK AND JAMES W. DENVER, def'ts.
} In equity. No. 3706, eq. doc. 13.

The said Charles F. Peck and James W. Denver do hereby revoke the submission of a portion of this case heretofore made by them to referees, and which was by consent made a rule of this court, to the end that the case may proceed here in due course of law, and according to the course of the court.

JAMES W. DENVER,
By PIKE & JOHNSON,
*Solicitors.*
C. F. PECK, *Present.*

PIKE & JOHNSON, *Solicitors.*

In the supreme court of the District of Columbia. Sitting in equity.

ROANE, EX'R HUGHES,
*v.*
DENVER & PECK.
} No. 3706. Equity doc. 13.

The petition of the complainant, heretofore filed in this cause, praying that the defendant may, by the order and decree of this court, be compelled to bring into this *this* court, to be invested under the direc-
234 tion of this court, the sum of $39,314.05, being the amount alleged in the original bill to have been received by the defendants as the portion or share of fees to which the testator, Hughes, was entitled, coming on to be heard, and the same having been argued by counsel for the respective parties, complainant and defendant, and the court having heard and considered the same, it is, this 16th day of November, in the year 1874, by the court ordered, adjudged, decreed, that the complainant is not entitled to the order prayed for, and that his said petition be, and the decree is hereby, refused.

And it further appearing to the court that upon the order of reference to arbitrators heretofore made in this cause, testimony was taken in writing before the said arbitrators, it is by and with consent of the said parties further ordered, adjudged, and decreed by the court, that the testimony so taken shall and may be returned to this court and filed in this cause, and stand as if regularly taken under the order of this court, to be read on the first hearing of said cause.

And by like consent of said parties it is further ordered that this cause be taken from the calendar of this court; that either and each party may proceed to take such further testimony as they may be advised to take, before James O. Clephane, one of the commissioners of this court,

to have the same completed and return' to this court on or before the first day of December next, and that this cause be set down for hearing at the next terms of this court issuing this present term.

By the court.

A. W.

We consent to this decree.

BRADLEY & HENKLE,
*For Complainant.*

235 *Evidence.*

Lamar case.

In the supreme court D. of C.

ARCHIBALD ROANE, EXECUTOR OF JAMES Hughes,
*v.*
JAMES W. DENVER AND CHARLES F. PECK.

WASAINGTON, D. C., *July* 1, 1874.

Commission met pursuant to notice. Present, Jos. H. Bradley, jr., counsel for the plaintiff, and Hon. Albert Pike, counsel for the defendants.

Without entering upon the examination of witnesses, the commission adjourned until Monday morning, July 6th, 1874, at 11 o'clock a. m., at the same place.

JAS. O. CLEPHANE,
*Examiner in Chancery.*

WASHINGTON, D. C., *July* 6, 1874.

Commission met pursuant to adjournment. Present, counsel on either side. The examination of witnesses was proceeded with as follows:

236 *Deposition of Archibald Roane, for plaintiff.*

ARCHIBALD ROANE, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

By Mr. Bradley:

A. I reside in Georgetown, D. C. I am engaged in the prosecution of claims, and am the plaintiff in this suit. I knew James Hughes, the deceased. I am his executor. I have qualified as such.

Q. Who was James Hughes, and what was his occupation in his lifetime?

A. James Hughes was a lawyer, and a member of the firm of Hughes, Denver & Peck.

Q. How was he employed before the firm was formed?

A. He had been a judge in the State of Indiana, and afterwards a judge of the Court of Claims, a member of Congress, and a professor of law at Bloomington, Indiana.

Q. At what time did he resign from the bench of the Court of Claims?

A. I think it was in 1864 or 1865; I am not certain about that.

Q. What did he do then?

A. He then established a law firm.

Q. Whom did he associate with him?

A. First Isaacs, and then Messrs. Denver & Peck.

Q. What class of cases did this firm undertake the charge of?

A. They undertook the charge of cases in all the courts, and prosecuted cases before the executive departments and before all the commissions.

Q. Were you at any time employed by this firm?

A. Yes, sir.

Q. What time did your engagement begin?

A. I came to Washington from Richmond in September, 1865. I had been chief of the produce loan office bureau of the Confederate Government, which had charge of the cotton operations of that government.

237 A few days after my arrival I went to the office of Hughes, Denver & Peck to give them some information with regard to a case which had been referred to them from the Treasury Department. I prepared a brief in the case. I went South and got the testimony of Mr. Trenholm, late secretary of the Confederate treasury department; returned in a week or two; was about the firm office all that fall while this case was pending; all the fall of 1865, and the winter of 1865 and 1866, nearly every day. I came in and out nearly every day while this case was pending. In April, 1866, I met Judge Hughes on the street, and entered into a conversation, and he proposed that I should go to the office and engage with him, personally, which I did. I remained with him until the fall of that year, when it was proposed that I should be taken into the service of the firm of Hughes, Denver & Peck, which was agreed to by all the members of the firm.

Q. What relation did you hold to that firm then?

A. I was paid by Judge Hughes during the time I was with him out of his own means. I was taken into the service of the firm, as I said before, in the fall of 1866, and was engaged principally upon account-books, preparing briefs in department cases, assisting M'r Peck in Court of Claims cases, conducting a portion of the correspondence of the firm, and in reading proof and attending to the general business of the firm. I remained with the firm until its dissolution in March, 1869, and subsequently, in June or July, 1869, Judge Hughes proposed a partnership to me, which I accepted, but at the same time I performed all the duties that I had hitherto performed connected with the firm until, I think, the next year—I am not certain about the time—when my duties were confined simply to keeping the books of the firm and attending to outside financial matters, with a corresponding reduction of my salary. Judge Hughes at that time had his office on Pennsylvania avenue, over Alexander's upholstering establishment. I spent some hours at the firm office each day. In fact, I divided my time between Judge Hughes' private office and the firm office. In May, 1871, Judge Hughes, Reuben

238 Middleton, and myself formed a new firm, under the name and style of "James Hughes & Co.," and moved into the rooms above the rooms occupied by the firm of Hughes, Denver & Peck. I think it was September, 1872, that there was some dissatisfaction expressed by General Denver, which lead to a correspondence between General Denver, the firm, and myself, and which resulted in my giving up the books of the firm in November, 1872. I ought to state that after I removed into the office on Pennsylvania avenue I still remained in charge of the firm account-books, and occasionally performed other labors not connected with accounts. This dissatisfaction of which I have spoken was expressed by General Denver in September, 1872.

By M'r Pike:

Q. You gave up the books the 1st of November, the same year?

A. Yes, sir. I was with the firm up to that time, and remained in partnership with Judge Hughes up to the day of his death. I had constant communication with him in regard to the business of the firm.

By M'r Bradley:

Q. State when he died, and where.

A. He died October 21st, 1873, at Hyatsville. I am now his executor.

Q. State whether it was a protracted sickness or not.

A. Yes, sir. He had been in bed almost continuously three months previous to his death; was ill during the whole of the year 1873, so as to be incapacitated for business, except at occasional intervals. In the year 1872 he was also incapacitated generally for business in consequence of the falling of the upper lid of his left eye, which, as the doctors said, indicated paralysis. His attending physician, as I understood, advised him to keep himself free from care and excitement of all kinds.

By M'r Bradley:

Q. We will go back a little. Who originated this firm?

A. The firm, as I have understood, was originated by Judge Hughes.

M'r PECK. State only what you know.

239 WITNESS. I say I understood. It was formed before I came to Washington.

Q. State to what extent the firm's business grew?

A. The business was very large. I will state here that when I was first employed by Judge Hughes personally, I was engaged principally upon firm business, preparing briefs in firm cases before the departments, etc.

Q. State whether the business was highly profitable or not?

A. The business was highly profitable. I will state in this connection that Judge Hughes was understood to be the intimate friend of President Johnson and Secretary McCullough, and through this intimacy obtained a contract, a very valuable one, from the Treasury Department for the discovery and collection of Confederate property.

By M'r Pike:

Q. For the firm?

A. Yes, sir; the contract was for the benefit of the firm, of course. General Denver was sent South to look after the business connected with this contract.

Q. Were you here, and do you know anything about it?

A. Yes, sir; I was here. That was the time I was visiting the office. I had no connection with the firm, but I was visiting the office, and heard it it spoken of constantly.

By M'r Denver:

Q. At the time the contract was made?

A. No, sir; but I have seen the contract, and I have seen Mr. McCullough's letters.

(Objected to by M'r Peck as irrelevant).

Q. State, if you please, in what manner the business of the firm was distributed among the several members, if there was any such arrangement?

A. So far as I know there was no positive agreement as to the distri-

bution of duties. It was understood, however, that Judge Hughes should attend to cases.

Q. In point of fact, how was it done?

240 A. Judge Hughes attended to cases in the Supreme Court, and at that early period attended to most of the department business, in consequence of his intimate relations with the Secretary, with the Executive also; he attended to most of the contested cases in all courts at that period.

Q. What period?

A. The earlier period.

Q. Subsequently, in the course of their business, how was it carried out?

A. Subsequently, Mr. Peck had charge of the cases in the Court of Claims. I do not know whether he was assigned to them or whether he took charge of them himself. Judge Hughes, however, very often assisted him in the Court of Claims cases. I think, until most of the principles regulating captured and abandoned property had been settled, he argued the "Aubert" and "Eslava" cases.

By M'r Pike:

Q. Cotton cases?

A. Yes, sir; a large number of copies of the argument was printed at the expense of the firm and circulated. At a later period most of the Court of Claims cases fell into the hands of M'r Peck. Judge Hughes then attended principally to cases in the Supreme Court of the United States, and General Denver to the cases in the departments and Congress, although this division was not strictly adhered to, each member of the firm rendering services in the department tacitly assumed by the others.

Q. State whether the expenses were large or not in conducting business, and how they were defrayed?

A. The expenses were very considerable; there is one fact in this connection I will state: M'r Peck was invited to join the firm by Judge Hughes, in consequence of a request made by his father.

Q. Have you any personal knowledge of these facts?

A. I have heard Judge Hughes speak of it and M'r Peck; also, M'r Peck, and I have conversed on the subject very frequently, and he has acknowledged himself under great obligations to Judge Hughes, who had brought him into the firm. M'r Peck was then practising

241 law in Chicago. Judge Hughes and M'r Peck (Judge Peck, the father of this gentleman) were very intimate; and Judge Peck suggested to Judge Hughes that he had a son in Chicago practising law.

Q. State what was done with Exhibit No. 2.

A. After it came back from General Denver it was handed to me by Judge Hughes.

Q. State whether it was accepted or not and retained by him.

A. It was handed to me by Judge Hughes with the request to place it among his private papers in his private drawer in the safe.

Q. What became of it?

A. It remained in my possession from that time until now. There was no formal acceptance. I only know that it was received and that he instructed me to file it away. There was no other acceptance.

Q. Do you recollect the case of one Gassaway B. Lamar v. The United States?

A. Yes, sir; that case came into the firm before its dissolution.

Q. What is the character of that case?

A. It is a claim for cotton. Lamar was understood to be a rebel and had no standing under the interpretation of the law at that time in the Court of Claims. Motions were made by the government solicitor to dismiss the case, but M'r Peck, by dilatory motions—he at that time having charge of the Court of Claims cases—kept it on the docket, and motions to dismiss; therefore it never come to a hearing.

Q. About what time was that claim received by the firm?

A. It was received before the dissolution. I do not remember at what time precisely, but I think in 1867 or 1868.

M'r PECK. It must have been before the 20th of August, 1868, because the statute barred such claims then.

WITNESS. Yes, sir; it was before 1868.

M'r PIKE. I suppose that the only material thing that you desire to show is that it was received by the firm, and that is admitted in the answer.

242 WITNESS. Yes; it was received by the firm. M'r Peck kept it on the docket in the manner I have stated. The government solicitor had made a motion to dismiss, and M'r Peck kept it on the docket by dilatory motions until the Supreme Court, in the case of Klien, decided that persons who had taken the benefit of M'r Lincoln's amnesty proclamation were restored to the rights which they had forfeited by the rebellion. Under that decision the Lamar case became a good one if it could be established by proof. Previous to that time it was only by sufferance that it was allowed to remain on the docket.

Q. Was that case prosecuted by the firm?

A. It was prosecuted by the firm; testimony was taken and the testimony was very nearly completed when, in January, 1873, during the temporary absence of M'r Peck, I believe, Judge Hughes was left in charge of the case and made some motions in the Court of Claims, which I myself drew up.

By M'r Pike:

Q. What were the motions?

A. He wanted to amend the petition so that he could bring in cotton that he had had charge of as president of the Exporting and Importing Company. Judge Hughes obtained the allowance of one motion, I am sure, and shortly afterwards met M'r Lamar on the street.

Q. Were you present?

A. No, sir; I was going to say that I heard from him immediately afterwards, and was told by M'r Peck; I talked the matter over with M'r Peck as to what he had told him to do; he told M'r Peck to draw up the motions of withdrawal from the case at all events. Something had transpired between them, and he directed M'r Peck to draw up the motion.

By M'r Bradley:

Q. You say that something transpired between them?

A. Yes, sir; I did not hear what transpired, as I was not present. A motion of withdrawal from the case was drawn up by M'r Peck and submitted to Judge Hughes.

M'r PECK. That is, I told you.

243 WITNESS. And as I saw it. I saw the motion in your handwriting.

Mr. PIKE. It is the same motion that is on record?

A. Yes, sir; the same motion that I have; the motion of Judge Hughes' withdrawal from the case was drawn up by Mr. Peck; I have seen the motion, and it is in his own handwriting; I know it only from

that, and from what Judge Hughes told me. Judge Hughes was dissatisfied with the form of the motion, and made erasures therefrom, and additions thereto.

By Mr. Pike:

Q. The motion to which you refer is the same one that has been on exhibition here?

A. It is a motion to withdraw appearance.

Q. The same as you exhibit with the bill?

A. Yes, sir.

By Mr. Bradley:

Q. Is it Ex. A. R. No. 7?

WITNESS. That's it.

Q. Are those erasures still existing in this exhibit, No. A. R. No. 7, or in the original, of which A. R. No. 7 purports to be a copy?

A. Yes, sir.

Q. Look at this paper and state what it is, whether it is an original or otherwise [handing witness a paper].

Mr. PECK. Do you propose offering that paper in evidence?

Mr. BRADLEY. I propose to offer it in evidence for what it is worth.

Mr. PECK. We object.

Q. State whether that is the original paper from which the Exhibit A. R. No. 7 was copied? [Referring to paper previously shown witness.

A. It is.

Q. State under what circumstances that paper was written?

244 A. I know that it was brought to our office by Mr. Peck, and placed in the hands of Judge Hughes.

Mr. PIKE. What was brought?

A. This original paper.

By Mr. Bradley:

Q. Was there any writing upon that paper at the time it was so brought by Mr. Peck to your office?

A. There was writing which appears in the handwriting of Mr. Peck.

Mr. PECK. Just read what was on it at that time?

WITNESS (reading). "Gassaway B. Lamar vs. The U. S." "No. 3222, U. S. Court of Claims." "Now here comes James Hughes, heretofore one of the attorneys of record in this case, and moves that his name be erased as such attorney, and that he have leave to withdraw his appearance and sever his connection with the said cause."

Q. Now you say that so much as you have read was in the handwriting of Charles F. Peck, and brought there by him?

A. Yes, sir.

Q. Did Mr. Peck leave the paper there, or was he present afterwards?

A. I do not remember in regard to that.

Q. State, if you please, whether any modification or alteration was made in that paper by Judge Hughes; and, if so, what those alterations and modifications were.

A. Alterations were made by Judge Hughes by striking out the words, "that his name be erased as such attorney," and after the word "appearance," by striking out the words, "and sever his connection with the said cause," and by adding, in his own handwriting, the following words: "Reserving to the firm of Hughes, Denver & Peck, and every member thereof, all rights as to full compensation for services rendered up to the present time."

Q. About what time was that paper presented by Mr. Peck?
A. It was in January, 1873, immediately after the quarrel with Lamar.

Q. What action, if any, was taken on that paper?
245 A. The motion was not presented to the court in that form.

By M'r Pike:

Q. That original paper was not used then?
A. No, sir; but another motion was drawn up by me.
M'r PECK. Let that be shown by the record.
WITNESS. Very well.

By M'r Bradley:

Q. What authority had you to draw it up?
A. The authority of Judge Hughes.

By M'r Pike:

Q. The motion that was actually made?
A. Yes, sir; as I understood it, it was the motion that was actually taken away from the office; I drew it up, and I think it was filed; I do not know whether he filed that particular motion that I prepared or not.
Q. Why was this paper preserved, and by whose authority?
A. It was preserved by Judge Hughes.
M'r PIKE. Don't state anything that was said about it in the absence of the other parties.
WITNESS. And placed in my custody.
Q. State what transpired at the time that Judge Hughes made those alterations.
M'r PIKE. I object to any statement made by Judge Hughes in regard to this matter in the absence of M'r Peck or M'r Denver.
WITNESS. Judge Hughes told me to keep it as a record of what had taken place in the case.

By M'r Pike:

Q. State whether M'r Peck was present at that time or not.
A. I do not remember whether he was present or not.

By M'r Bradley:

Q. State who was present when M'r Peck brought the original paper writing into the office.
246 A. I think M'r Middleton was present, but I am not positive.
Q. Was Judge Hughes present?
A. Yes, sir.
Q. You were present, were you?
A. Yes, sir.
Q. What passed between you at that interview; I mean between these parties in reference to this paper, the original paper?
A. I do not remember what took place particularly, except a general talking over of this quarrel between Lamar and himself.
Q. Who submitted that paper to Judge Hughes?
A. M'r Peck.
Q. Was that paper discussed at that time between M'r Peck and Judge Hughes?
A. There was some conversation about it.
Q. Was there any assent or dissent expressed by Judge Hughes to the original writing?
A. He dissented from the original as presented by M'r Peck.

By M'r Peck:

Q. Do you mean in my presence?

A. I do not say that; I cannot state whether it was in your presence or not.

By M'r Bradley:

Q. Was it acted upon by Judge Hughes about the time it was presented by M'r Peck?

A. Yes, sir; about that time.

Q. Can you state how near the time it was?

A. It was either while M'r Peck was present or immediately after he left.

Q. I understand you to say that it was almost cotemporaneous?

A. It was cotemporaneous.

Q. Have you any means of fixing the date when those instructions were given by Judge Hughes to you? Did you make an entry of it when it was fresh in your mind?

A. As I said, he placed it in my custody, and told me to keep it as a history of the transaction, about that time.

247 Q. Did Judge Hughes render any services in that case other than the motion that you speak of?

A. I do not know of any other.

Q. Who was treated by Lamar as his principal counsel in the case?

A. M'r Peck, principally. That is to say his interviews were principally with M'r Peck, except during the temporary absence of M'r Peck when he came up into our office. He frequently came into our office above the office of Hughes, Denver & Peck while M'r Peck was absent.

Q. Can you state from any declarations made by the parties to this suit, or either of them, what was the occasion of this action of Judge Hughes in reference to that suit?

A. I am very certain I have had conversations with M'r Peck on that subject, as I have had on most other matters connected with the firm. M'r Peck and myself were quite intimate, and frequently talked over firm matters. We have talked over the Lamar matter frequently.

Q. Was or not M'r Peck made acquainted with the fact of these alterations by Judge Hughes, and any additions that he made?

A. I did call M'r Peck's attention to these alterations, but I do not remember at what time.

Q. With reference to the time they were made, was it shortly after, or a great length of time, and before, the motion was filed?

A. I remember soon after I qualified as executor showing the paper to M'r Peck, but I do not remember having shown the paper to him before.

Q. In your conversations with him, was it ever mentioned?

A. I could not state as to that.

Q. State further anything you know in relation to the Lamar case.

A. I heard M'r Lamar state to Judge Hughes that the fee in the case was to be ten per cent., although he said no written contract to that effect had been drawn up.

248 By M'r Pike:

Q. When was that?

A. While Judge Hughes had temporary charge of the case.

Q. Before he withdrew?

A. Yes, sir. Lamar was very frequently in the office. He came up there every morning.

Q. Is there anything further that you desire to state in regard to that?

A. I will state what M'r Peck has said to me about the Lamar case. He has stated to me several times that he had "no confidence in the Lamar case." I have frequently heard him say that Lamar was an old rascal or scoundrel. I do not know whether he used the word "scoundrel" or "rascal". I have heard him say on more than one occasion, and he has said to me, that he was surprised that judgment was obtained.

Q. Was that before or after judgment was obtained?

A. The expression of surprise that judgment was obtained was made within three or four months of this time. It was when I went to his house to talk about matters when I made a demand for Judge Hughes' portion of the fee in the Lamar case.

Q. State what became of the Lamar case.

A. Judgment was rendered in the case in favor of the claimant for $579,343.51, as stated in the pleadings.

Q. Was there an appeal prayed or not?

A. Yes, sir; an appeal was taken to the Supreme Court.

Q. By whom.

A. By the United States.

Q. What services, if any, were rendered by this firm in the Supreme Court concerning that appeal?

A. I do not know what services. It was understood that General Butler had charge, and that the appeal had been dismissed at his instance.

Q. Look at this paper and state what it is.

A. This is simply a diary of daily transactions of the firm of Hughes—James Hughes & Co.

249 Q. Why was it kept?

A. It was simply kept for the purpose of preserving a written record of what took place.

Q. Was the fact of its being kept known or recognized by the firm of H., D. & P.?

A. No; I think not.

Q. Was it a private diary?

A. It was the diary of the firm of James Hughes & Co.

Q. Look on page 97, and state what entry is made there with reference to the case of "G. B. Lamar," under date of June 6th, 1873.

(Objected to by M'r Peck.)

A. I went up to the Court of Claims and examined the judgment docket, and found that the following judgments had been rendered on June 2d.

Q. You can omit the entries except as to "G. B. Lamar."

M'r PIKE. We object to any entry there as to the Lamar case.

(Witness reads as follows:) "Examined judgment docket in the Court of Claims and found the following had been given June 2d: First, G. B. Lamar, for $579,343.51." Then, in parenthesis, I make this entry: "In this case Denver & Peck are counsel of record, Judge Hughes having withdrawn his appearence, but without relinquishing his right to his portion of the fee to be paid by Lamar." This entry was made at the instance of Judge Hughes.

Q. What is the date of that entry?

A. June 6th, 1873.

M'r PIKE. We object to the whole of that.

Q. You state the entry to be that it was made at the instance of Judge Hughes?

A. Yes, sir.

250 Q. Was that done in the carrying out of the original understanding at the time that Judge Hughes made the alterations upon M'r Peck's motion?

M'r PIKE. We object to that.

WITNESS. It was carrying out his own understanding.

Q. Was this Lamar case attended with much labor in its preparation, in the collecting of the evidence and the settlement of questions of law involved in it?

A. There was considerable labor in taking the testimony, and a great deal in the beginning to keep the case on the docket; and there was a good deal of anxiety.

Q. Was this preparation of which you speak before or after the quarrel with Lamar?

A. Before the quarrel with Lamar.

Q. What became of the appeal in this case?

A. The appeal was dismissed.

Q. Was it at the instance of the firm, and through its efforts, that the appeal in this case was finally dismissed—the firm of Hughes, Denver & Peck?

A. Of course I do not know what was done after I left the firm. I do not know everything that was done by them, but it was generally understood that the appeal had been dismissed through the interference of Gen. Butler.

Q. By whom; by the members of the firm?

A. Not that I know of. I never conversed with them on the subject.

Q. Do you know anything on that subject, whether other parties interested in it employed parties to procure this dismissal?

A. Not in this case. This is not one of the Duncan-Sherman cases.

Q. State what connection the case of one Martin has with the case of G. B. Lamar; explain it fully.

A. The amount of the claim by Martin was for cotton, embracing the claim of one Thompson for cotton, which was covered by the claim of Lamar. Thompson, as I understood, had lost his right to appear before the court by not filing his petition in time; I am not certain

251 about that; Lamar had been his factor, and a contract was made by Judge Hughes, drawn up by himself in his own handwriting, with Martin, for the payment of 50 per cent. to the firm of Hughes, Denver & Peck, in case the claim should be recovered. M'r Peck brought the contract to me, I think after the dismissal of the appeal in the Lamar case and the collection of the money—I am not exactly certain as to that; it was recently, however—and exhibited to me the contract, which I had forgotten, although I remembered something of the circumstances of Martin's interview with Judge Hughes when he brought the papers to me. M'r Peck came for the purpose of getting my consent, as the executor of Judge Hughes, to the reduction of the fee to be paid to the firm, Martin representing that Lamar had a claim for one-half of the proceeds of the cotton, and if 50 per cent. were paid to the firm, that he would have nothing left for himself.

Q. This was what M'r Peck said to you?

A. Yes, sir; in my office. I said that I thought it was a very hard case, and that under the circumstances, so far as I was concerned, I would agree to a reduction of the fee, and suggested, I think, myself 33⅓ per cent.

M'r Peck said that Gen. Denver had left the matter entirely with him; but that he did not like to act on his own responsibility without having

the opinion of the other parties concerned. I have understood that the fee was reduced to 30 per cent. That is all I know about it.

Q. Did you explain how it was embraced in the Lamar case?

A. It was cotton that was in Lamar's hands as a factor, I think, stored with Lamar.

By M'r PIKE: Q. And he claimed for it?

M'r BRADLEY. Lamar's claim embraced it?

WITNESS. Yes, sir.

By M'r PIKE: Q. It was recovered under the Lamar claim?

252 WITNESS. Yes, sir.

Q. There never was any judgment in favor of either Thompson or Martin?

A. No, sir; I do not think they had a standing in the court, though I am not sure.

Q. At any rate it was recovered under the Lamar case as a part of the Lamar judgment?

A. Yes, sir.

By M'r Bradley:

Q. Was there any adjustment, partial or otherwise, affected by you with the surviving members of the firm in January, 1874, or thereabouts? And if so, explain what it was.

A. There was. Several letters were written to Denver & Peck.

(Oral testimony in regard to this matter objected to by M'r Peck.)

WITNESS. I say there were several letters addressed by me to Gen. Denver, and to M'r Peck, copies of which are on file as exhibits, and admitted, proposing an adjustment or settlement of all the outstanding differences between Judge Hughes and the firm, and an adjustment or settlement did take place between myself, or rather the basis of a settlement, between myself and M'r Arthur Denver during the absence of Gen. Denver and M'r Peck.

Q. Whom did M'r Denver represent?

A. Gen. Denver and M'r Peck.

Q. By authority?

A. As he stated, by authority.

Q. You say that the basis was agreed upon?

A. Yes, sir.

By M'r PIKE: Q. That did not include this Lamar case?

A. No, sir.

By M'r BRADLEY: Q. Does it all refer to the other part of the case?

253 A. Because the appeal in the Lamar case had not been dismissed.

Mr. BRADLEY. Go on and state.

WITNESS. The basis agreed upon by Mr. Arthur Denver and myself was, that all the outstanding liabilities of the firm were to be paid off. The overdraw of Judge Hughes was to be equalized, and entries to that effect were subsequently made, and it was understood there was nothing outstanding between the estate and Gen. Denver and Mr. Peck. A judgment had been obtained by John S. Williams against the firm for upwards of $2,000. We made an estimate, and the sum of $2,500 was retained to pay that judgment with all the expenses.

(Objected to by Pike as irrelevant.)

By Mr. Bradley:

Q. I wanted to know simply whether there was an adjustment.

A. An arrangement was made to pay all the outstanding indebted-

ness, and a division was made with me of the amount on hand at that time; an equal division of all the moneys that were on hand, after making these deductions, and reserving money for the purpose of paying the firm indebtedness.

Q. An equal division of one-third portion?

A. Yes, sir. There was about $9,000 left out of collections which had recently been made, and $3,000 was paid to me. A small amount, however, was left in the hands of the firm to pay current expenses.

Q. At that time the Lamar judgment had not been obtained?

A. The Lamar case had been appealed, but the appeal had not been dismissed.

Q. State, if you please, any other matter or thing that you know of connected with this case.

A. I do not remember anything at present—unless my attention is called to some particular point—except I would say, nothing was said at the time of the adjustment about its being a settlement on account; nothing was said about waiving or not waiving rights.

254 I will state further in regard to the Lamar case, that Lamar was an extremely disagreeable man to everybody with whom he was brought in contact.

Cross-examination by Mr. Pike:

Q. State whether in that adjustment made between you and Arthur Denver that you have spoken of, the Lamar case was taken into consideration at all.

A. Not that I remember.

Q. Neither one way nor the other?

A. No, sir.

Mr. PIKE. Then I object to all showing in regard to that settlement, and give notice that I shall ask the court to strike it out.

Q. Did you at that time know of any question between Judge Hughes and Messrs. Denver and Peck in regard to that case?

A. I had never conversed with Gen. Denver on the subject until the——

Q. What I want to know is, whether you did or did not understand at that time, when you made that adjustment, that they denied his interest in the Lamar fee?

A. I never had any conversation with Gen. Denver on the subject. I mentioned the subject once, incidently, to Mr. Peck.

Mr. BRADLEY. After the settlement?

A. No, sir; I think before the settlement, and there was no positive answer given by him to me, one way or the other.

By Mr. Pike:

Q. That was not the question I asked. I want to know whether you understood at the time they made that adjustment, they questioned the right of Judge Hughes to any interest in that fee?

255 A. I do not remember anything about it. I never had any conversation with Gen. Denver on the subject at all, and I have stated my conversation with Mr. Peck.

Q. You and Arthur Denver didn't undertake to settle the right as to that matter?

A. No, sir; we did not undertake to settle any cases except those which had been collected.

Q. Do you know who prepared the petition in the case of Lamar?

A. I think M'r Peck did.

Q. Do you know who attended to the taking of the testimony?

A. M'r Peck attended to most of it. Gen. Denver, I believe, took some of it in the office below.

Q. Did Judge Hughes attend to that at all?

A. No, sir.

Q. Neither to the preparing of that petition, nor to the taking of the testimony?

A. Not that I remember of.

Q. When this paper was brought by M'r Peck to Judge Hughes, did you understand at all, at the office, from M'r Peck or Judge Hughes, how he came to prepare that paper for Judge Hughes?

A. Yes, sir; I understood that it was prepared at the instance of Judge Hughes.

Q. M'r Peck had prepared it at the instance of Judge Hughes, and brought it to him?

A. Yes, sir.

Q. When M'r Peck came to you to consult you in regard to reducing that fee in the Martin case—I call it the Martin case because I believe the cotton really belonged to Martin—was not that after you had informed him that you had intended to claim an interest in that fee, or demanded it?

M'r BRADLEY. As the executor, you mean?

M'r PIKE. Yes, as executor.

WITNESS. I do not remember about that.

Q. Didn't you inform him at that time that you claimed an interest in it?

256 A. I informed M'r Peck soon after I qualified as executor that I would claim an interest in the case.

Q. That was before he came to you to see if you would consent?

A. That was soon after I qualified as executor. He had made no reply to me as to whether he would acknowledge it or not.

Q. Was it not after you informed him that you were going to claim an interest that he came to you to get your consent to reducing the fee; before he came to you to get your consent to the reduction of the fee hadn't you informed him that you claimed an interest in the fee as executor?

A. I cannot say that I had notified him; I conversed with M'r Peck soon after I qualified as executor, and I mentioned that case incidentally. It was not then a case to talk about, because the case had been appealed, and the appeal had not been dismissed. It was not known whether the appeal ever would be dismissed.

Q. Didn't you inform him that you intended to claim one-quarter of that fee before he came to you to get your consent to the reduction?

A. I do not remember whether I informed him of that or not. I conversed with him about the Lamar case. I made a demand for a portion of the fee in the case. I first made the demand for a quarter.

Q. State whether he was not informed, before he came to you to get your consent to reducing the fee, by you, that you intended to claim a part of the fee as executor.

A. I do not remember precisely the time.

Q. Don't you remember that it was before?

A. No, sir; I do not remember whether it was before or after; I remember that it was all within a short time.

Q. What time was it that he came to you to consult you about reducing the fee?

A. It has been within the last two or three months that he came to me.

257 Q. Say about what time.

A. I should say it was some time in April—some time this last April. It was either in March or April.

Q. You were qualified as executor, when?

A. I think the last of October or the first of November, 1873.

Q. Wasn't it shortly after that that you talked with him about taking a quarter of the fee?

A. It was merely in conversation—not with reference to anything that was practically in hand, because I did not know that the Lamar judgment would ever be paid; whether the appeal would ever be dismissed. I did not know at that time, and I did not think it was sufficiently practical to have any specific agreement on that subject, or to make any demand.

Q. What I want to get at is this, whether Mr. Peck did not know when he came to you to get your consent to reducing the fee, that you were going to claim an interest in it.

A. I really cannot tell. I think it was either in March or April, and you might estimate from that whether it was afterwards or not. I know soon after the appeal was dismissed I did make a demand upon Mr. Peck and upon Mr. Denver, for Judge Hughes' portion. I communicated to them that I was willing to take one-fourth.

Q. When did you do that?

A. After the appeal was dismissed.

Q. When was that?

A. I do not know. It was in March or April, I do not know which.

Q. You cannot state, then, that at the time that Mr. Peck came to you to see if you would give your consent to reducing the pay that he did not know that you were going to claim an interest?

A. I cannot say that. It was near about that time; it may have been a little before or a little after; it was about that time; it was about the time of the dismissal of the appeal; it might have been a few days before or a few days after.

258 Q. You spoke about what Mr. Peck had said of Mr. Lamar, and that he was a rascal.

A. Yes, sir; a rascal, or a scoundrel.

Q. What did he say about his claim?

A. He said that he was very much surprised that judgment had been given in the case in favor of Lamar.

Q. Did he say why?

A. No, sir; I do not know that he said why.

Q. Did he ever say anything to you about the fairness and justice of the claim?

A. I do not know that he ever did.

Q. Lamar was pretty troublesome about fees, wasn't he? He didn't want to pay much fee, did he?

A. I had a conversation with Mr. Peck in regard to the fee, and I had always understood from him that the fee was to be ten per cent., but he always said that Lamar would not make a contract, and would not give a power of attorney.

Q. Didn't you understand by what was meant by Lamar being a rascal, that he looked upon him as a rascal generally?

A. I just understand that he meant that he was a rascal generally.

Q. In filing that petition, he had to make an averment of loyalty?

A. Yes, sir.

Q. Required by the law?

A. Yes, sir.

Q. And he made it?

A. Yes, sir.

Q. Do you recollect whether he stated in that petition that he had been amnestied?

A. I think that averment was made.

Q. That entitled him to claim?

A. Not under the decisions at that time.

Q. But he made that, and claimed it on that ground?

A. That was one of the averments. At that time the decision
259 had not been made in the Klein case, and it was regarded as a very dubious claim until that decision was made.

Q. Do you know of Judge Hughes ever paying any attention to the case in court after making that motion of withdrawal?

A. I never heard of his paying any attention to it, and I would have known it, I presume, if he had.

Q. In regard to the dismissal of the appeal, what you state about that is simply from information; you do not know personally?

A. No, sir; I do not know positively anything about it.

Q. You do not know who employed Gen. Butler, if he was employed?

A. No, sir.

Q. Do you know, or not, that Judge Hughes did not employ him?

A. I do not know.

Q. You do not know of your own knowledge who employed Gen. Butler?

A. No, sir; I understood Gen. Butler received 20,000 dollars for his services.

Q. You do not mean to give the idea that he was employed by Judge Hughes?

A. No, sir.

Q. You know nothing about the quarrel between Judge Hughes and Mr. Lamar, other than you have stated?

A. No, sir.

Q. In that conversation when that paper was brought there, was anything said about the quarrel by Mr. Peck?

A. I do not remember distinctly about that. The matter was talked over very frequently there. I do not remember whether Mr. Peck was present or not. I know that Judge Hughes read it to me immediately afterwards.

Q. You say that you heard Mr. Peck speak of Lamar as a rascal or a scoundrel. Was it not in connection with this case that he made use of those remarks in talking about the case?

260 A. In talking of the case, unquestionably.

Q. Do you mean that he spoke of him as a rascal in consequence of the nature of his case?

A. That I do not know. No, sir; I think not. He just spoke of him generally as a rascal.

By Mr. Peck:

Q. Did you ever hear me impugn the integrity or honesty of the case; the fairness and justice of it? I do not speak of the law.

A. I have heard you say that you were very much surprised at the judgment being given.

Q. But did you ever hear me say anything that indicated that I did not think the case was not an honest or a just one?

A. I do not know that I have.

Mr. BRADLEY: Q. Why did he say that he was surprised at the judgment in the case?

A. I do not know.

By Mr. PIKE: Q. State if you heard Judge Hughes give any opinion about the case, and say anything in denunciation of it; and, if so, state what it was.

(Objected to by Mr. Bradley.)

WITNESS. I will say this: I have heard Judge Hughes in a passion say (I do not remember distinctly the words) that the case was a fraudulent one. I have heard him say, also, that he did not intend to injure the case in any way, because he considered himself interested in it, and even if he was not interested in it he would not do so.

By Mr. BRADLEY: Q. What did he say on these subjects after this alleged withdrawal of his from the case; did he still treat himself as interested in it or not?

(Counsel for the defendant objects to the witness stating anything about Judge Hughes saying that he was interested in the claim, or considered himself so.)

261 A. Yes, sir. I have just stated that he said that he was interested in the case. Judge Hughes, when in a passion, would denounce everybody and everything. He was a very irritable man; what he said under such circumstances did not represent his real sentiments at all, either about persons or things, in nine cases out of ten.

ARCHIBALD ROANE.

Sworn and subscribed to before me this 1st day of July, A. D., 1874.

JAMES O. CLEPHANE,
*Examiner.*

The commission adjourned to meet on Friday, July 10th, at the same hour and place.

JAMES O. CLEPHANE,
*U. S. Commissioner.*

WASHINGTON, D. C., *July 10th.*

Commission met pursuant to adjournment. Present, counsel on either side. Owing to some misunderstanding as to the time of meeting, and with a view of accommodating all the parties, adjourned to meet on Saturday morning, July 11th, at the same hour and place.

JAMES O. CLEPHANE,
*U. S. Commissioner.*

262 United States Court of Claims.

G. B. LAMAR
*v.*
THE UNITED STATES. } No. 3223.

1873.

Jan. 9. Mr. Hughes filed a motion asking leave to withdraw his appearence as attorney. Allowed.
March 8. Call on Treasury Department allowed and issued.
" 21. Claimant's brief filed.
April 22. Additional brief for claimant filed.
May 2. Reply of Treasury Department filed.
" 3. Messrs. Bartley and Janin and E. P. Norton filed their motion for leave to file intervening petition.

May 19. Motion of May 3d argued and submitted and overruled.
" 20. Argued and submitted. Amended petition filed; both parties filed findings.
June 2. Chief Justice Drake announced the decision of the court: Judgment for claimant for $579,343.50. Court filed findings.
" 9. Attested transcript of judgment issued to attorneys of record.
Aug. 30. Application for allowance of appeal filed by Attorney General and allowed by Chief Justice Drake at chambers and attorneys notified.
Oct. 24. Record on appeal delivered to defendants.
Nov. 25. Leave granted to withdraw two receipts books, A. and B, filed December 23, 1871.

263 1874.
April 7. Mandate of Supreme Court dismissing appeal, filed by J. W. Denver, attorney of record.
" " Certificate of mandate given to attorney of record.

CLERK'S OFFICE COURT OF CLAIMS.

I hereby certify that the foregoing is a true copy of all the docket entries in the above-entitled case from January 9, 1874, to this date.

In testimony whereof I have hereto set my hand and affixed the seal of the court this 17th day of July, 1874.

ARCHIBALD HOPKINS,
*Chief Clerk Court of Claims.*

United States Court of Claims.

GAZAWAY B. LAMAR
*v.*
THE UNITED STATES. } No. 3222.

Now comes James Hughes, heretofore one of the attorneys of record in this case, and moves that his name be erased as such attorney and that he have leave to withdraw his appearance and sever his connection with the said cause, reserving to the firm of Hughes, Denver & Peck and every member thereof all rights as to full compensation for services rendered up to the present time.

264 United States Court of Claims.

GAZAWAY B. LAMAR
*v.*
THE UNITED STATES. } No. 3222.

Now comes James Hughes, one of the attorneys of record in his case, and asks leave to withdraw his appearance herein.

1873.
Jan. 9. Judge Hughes filed motion and withdrew his appearance from Lamar case, which was allowed.
June 2. Judgment in favor of Lamar for $579,343.51. See Diary, p. 97, in which it is stated, by direction of Judge H., as follows: (In this case Denver & Peck, on counsel of record, Judge H. having withdrawn his appearance but without relinquishing his right to his portion of fee to be paid by Lamar.)
Aug. 30. Case appealed to the Supreme Court.
1874.
April 6. Appeal dismissed.

In the supreme court, District of Columbia.

ARCHIBALD ROANE } Equity, No. Docket
*v.*
DENVER & PECK. }

WASHINGTON, D. C., *September 5th*, 1874.

Commission met at 5 o'clock, at the office of M'r Henkle, on Louisiana avenue. Present, counsel on either side. The examination of witnesses was proceeded with, as follows:

*Deposition of Charles F. Peck, for defendant.*

CHARLES F. PECK, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposed and says:

Examined by M'r Luther H. Pike:

Q. Please state what connection, if any, you had with the motion of M'r James Hughes, filed in the Court of Claims, to be permitted to withdraw from the Lamar case before that court, and all that you may know in regard to that motion?

A. One day Judge Hughes came into the office—the precise date I cannot remember, but it can be fixed by being one or two days
266 before the motion was filed by him in the Court of Claims asking leave to withdraw. He said he had just met M'r Lamar at the foot of the stairs, and had told him that he was going to withdraw from his case, and he wanted to make the same communication to me, and asked me if I would draw up a motion to that effect for him; that he would have nothing more to do with the case; that the case was a fraud, and Lamar was a bad man.

Mr. HENKLE. I suppose it is understood that all this is taken subject to exception—statements of the deceased not being evidence under the law of this District.

Mr. DENVER. Subject to the same exception that was reserved by us when Mr. Roane was giving testimony in regard to the same.

WITNESS. Just state such objections as you desire to make, and let them be recorded.

Mr. HENKLE. Then I will have an objection noted to statement of conversations between Mr. Peck and Judge Hughes, the deceased, as incompetent.

WITNESS. He told me further that he was going to Mr. Lamar, and require Mr. Lamar to settle with him personally for services he had rendered in the case, and urged me to do the same, which I declined to do. I told him that at present I was not prepared to take any such course. He then repeated his request to me to have me draw up a motion for him, and I told him that I would do so. Shortly afterwards I prepared the motion which Mr. Roane has testified to, and produced, I think, in my handwriting, putting into the motion the expressions he had used, and which I understood he directed me to put in.

Q. Did you put in the expressions that he did use, or did he?

A. I wrote the motion, and put in those expressions that I understood him to request me to put in. I understood from his language that he wanted it to appear unequivocally that he had severed all his connec-

tion with the case in every way. That is why I worded the motion as
I did. I took the motion up-stairs that same afternoon, and gave
267 it to him. I think he did not look at it at all in my presence. If
he did he certainly made no objection to it, or found any fault with it. I had no conversation whatever with him on the subject. The alterations which were made in the motion, were made without my knowledge, and I never knew or heard of them until long after Judge Hughes' death.

By Mr. ROANE. You have seen the paper and recognized it?

A. I have seen the paper. It was originally in my handwriting, and certain parts in my handwriting are stricken out, but all that was done without my knowledge at the time, or at any time, until quite recently, and since Judge Hughes' death.

Q. You have seen the motion with the additions made by him in his hand writing?

A. Yes, sir; I have seen the motion as altered, but I did not see it until after this investigation commenced, I think.

Q. With the additions in his handwriting?

A. Yes, sir; I have since this litigation commenced, seen the motion as testified to by Mr. Roane, but I wish to say that I did not see them, and had no knowledge of them until this litigation commenced, or about the time of its commencement. I was not present at any interview between Mr. Roane and Judge Hughes in which the matter was discussed; never at any time, and Mr. Roane does not say so, I believe.

Mr. ROANE. No; I don't remember whether you were or not.

By Mr. PIKE: Q. I would like to ask the question here, whether the motion that you prepared was the one that was actually used by Judge Hughes before the court.

A. It was not, and I never saw it from the time I handed it to Judge Hughes unopened until after this litigation commenced. I never had any knowledge during Judge Hughes' lifetime that he asserted, or pre-
tended to claim any interest whatever in the fee to be received by
268 us in the Lamar case, either from him, or from anybody else;
and never had any information which had the remotest bearing upon the question.

(Latter part of answer objected to by M'r Henkle on the ground of its not being competent.)

WITNESS. At the time Judge Hughes notified me that he intended to settle with M'r Lamar personally, for his services, the firm had no contract with Lamar at all. I had had charge of the case almost exclusively, and had never been able to get Lamar to agree to our terms. We wanted 20 per cent., and we hoped to be able to compromise with him on 15 per cent. if we could not do any better. He had indirectly expressed a willingness to pay 10 per cent., which was not satisfactory to the firm, and we had never made any arrangement with him on that basis. The firm thought that in preference to making any agreement at 10 per cent. we would perform the services, secure the judgment if possible, and sue him on a quantum meruit, believing that if he would not give more than 10 per cent. we could recover more than that in a suit, and, therefore, we had no agreement up to that time. After this I did, on behalf of General Denver and myself, enter into a contract with M'r Lamar to pay General Denver and myself 10 per cent. on the amount recovered. All these fees and negotiation for fees were to be contingent on success; we had agreed to prosecute the case on the contingency, but had disagreed as to the per cent.

The statements made by M'r Roane with reference to my want of

confidence in the Lamar case require that I should make a statement as to the reasons of my feelings in that regard. The Lamar case was for the recovery of cotton captured by our armies at Savannah. The petitioner claimed over a million of dollars. The amount finally recovered was about $580,000. It was by far the largest case that the Court of Claims had ever passed upon at the time it was tried. Lamar had been conspicuously engaged in the rebellion. On account of his having been mixed up in a great many transactions, which, perhaps, he personally was not engaged in, his name had become very odious throughout the North. M'r Lamar, himself, was an extremely indiscreet, passion-
269 ate, and resentful man; he seemed absolutely and entirely to refuse to conform to the new order of things, and rather took a pride in rendering his offenses against the government conspicuous, and his own rash conduct was one of the greatest difficulties we had to contend with. He was continually parading his case before Congress, sueing the officers of the government, and a certain very offensive letter—I mean offensive to the government and the loyal people of the United States, which he had written—had fallen into the hands of the United States officers, and was read more than once in Congress. So that he occupied the position of being a champion rebel. Owing to all these facts I always believed up to the last moment that the Congress of the United States, or some executive officer of the United States, would prevent the payment of that claim, regardless of the law and the facts. I never, for a moment, to M'r Roane, or anybody else, expressed any doubt about the entire justice and fairness of the claim. I never, by any remark, in my life, impeached M'r Lamar's character for integrity in prosecuting the case, but I did think that it was extremely doubtful that a case of that magnitude, under these circumstances, would run the gauntlet, and finally be paid. I think the fee was an extremely low one under the circumstances. M'r Roane is mistaken in saying that I called M'r Lamar a rascal or scoundrel. What I did say was that M'r Lamar was an old "cuss."

By Mr. PIKE:

Q. Had M'r Lamar taken the oath of allegiance under the amnesty proclamation before or after the seizure of this cotton had been made?

A. M'r Lamar had taken the amnesty oath under M'r Lincoln's proclamation before his cotton had been taken into manual possession but after Gen. Sherman had entered Savannah. This, I thought, made his case a good one in law. My apprehension always was that in such a case the law would not be allowed to take its ordinary course.

Q. Then your opinion as to the legal validity of the claim was fixed and certain, and you only doubted because of his action and the temper of the times?

270 A. That was all. I thought the point on amnesty was a good one when I first made it, although then it was a new one, and the Court of Claims had decided like case adversely. Of course I had not the same confidence in the point at first as I had after the Supreme Court decided it favorably.

M'r ROANE. That is the point—taking the benefit of the amnesty proclamation.

WITNESS. Yes, sir; there was also a very serious doubt as to whether M'r Lamar had not lost the benefit of his amnesty oath by this remarkable letter which he wrote after taking it, and we felt that it would be necessary to fall back on the later proclamation of President Johnson. I will state that after Judge Hughes withdrew from the Lamar case

it was exclusively under my charge, and I never knew or heard of his doing anything in the case.

M'r ROANE. Afterwards?

A. Yes, afterwards.

M'r HENKLE. You do not claim that he did, M'r Roane?

M'r ROANE. No, sir.

By M'r PIKE: I would like to ask M'r Peck a question. Please state if you know the causes other than you have already stated that led M'r Hughes to the making of the motion of withdrawal referred to in the question first asked you.

A. He said to me that he had met M'r Lamar at the foot of the stairs, and had had a controversy with him.

M'r ROANE. Were you not present in front of Galt's?

A. No, sir; I will state about that. Afterwards, upon the same day, I accidentally encountered Judge Hughes on the sidewalk, in front of our office, while M'r Lamar was standing near, and he beckoned to me to go with him, and went up to M'r Lamar and said that he wanted to state in the presence of M'r Peck that he had determined to withdraw from his case. M'r Lamar said, "Very well, he was very glad of it." They both looked rather sullen, but no bad language passed between them.

271 (Conversation with Judge Hughes objected to by M'r Henkle as being incompetent.)

With regard to the claim of M'r Martin, it was embodied in the Lamar case, and was finally recovered in the Lamar judgment. M'r Lamar had been M'r Martin's factor, and had purchased for him some 259 bales of cotton, and when he brought his suit he had included his claim, because Martin had never paid him it, and he considered himself the owner, at least to the extent of the advances he had made; and when the Lamar claim was settled, M'r Martin was allowed his pro rata share after paying up his obligations.

By M'r HENKLE:

Q. Allowed by the court?

A. No, sir; allowed by M'r Lamar, after paying up his obligations.

Q. That was not entered up in judgment?

A. No, sir; the judgment was silent as to that.

Judge DENVER. There was a settlement between M'r Lamar and Martin?

A. We had a contract with M'r Martin for a small fee, originally 10 per cent., I think, perhaps 15 per cent. On account of the serious difficulties that arose, a later agreement had been made for 50 per cent. When we came to settle with M'r Martin, he urged upon me that that 50 per cent. contract had been got from him by Judge Hughes, and that the contract had left out one very important condition, which was, that the 50 per cent. was only to be paid in the event of the money being recovered within a limited time, and he pleaded it was a very hard case; that he had to pay M'r Lamar for the cotton, and then if he paid us 50 per cent. fee he would have little or nothing left. M'r Roane had notified me a long time before that he intended to make this claim which he now makes in this suit. It must have been a long time before this, because it was, as he says, before the appeal was dismissed, and for that reason we had not talked very much about it; we did not know that the appeal ever would be dismissed. This Martin compro-

272 mise arose after the appeal had been dismissed, and as the money was about being paid, I was inclined to yield to M'r Martin's de-

mands, thinking them somewhat reasonable. General Denver told me to do just what I pleased, and as M'r Roane intended to make this claim, I was unwilling to make the compromise without getting his assent, and merely as a precautionary measure, to avoid putting myself in the position of being liable, I called upon M'r Roane and asked him if he would object, and he acquiesced. He said he would acquiesce in whatever I did; he thought that perhaps 30 per cent. was rather too low, but he said whatever I did he would not complain of. He suggested 33⅓ per cent. I settled at 30. I did not understand that M'r Roane objected to any settlement I should make. Nothing was said in the interview admitting any right whatever in any way. I told M'r Roane at the interview that I wanted that one thing determined, and did not want to discuss any other matters. At M'r Roane's suggestion, I will make a correction here, that when he talked with me about the Lamar case, the Lamar case generally was spoken of, and nothing was specified as to the Martin case. I knew that the Martin case was included in the Lamar case, and I supposed that M'r Roane knew it also, for it was specified on the face of the petition.

M'r ROANE. I did know it, but it had escaped my mind.

WITNESS. If M'r Roane did not know it, I certainly supposed that he was talking about both cases—both being included in one, and that one known as the Lamar claim.

Cross-examination by M'r Henkle:

Q. When was your firm employed in the Lamar case?

A. I think in the spring of 1868.

Q. Was the suit brought at that time?

A. The suit appears to have been brought April 1st. My book has the date 1869, but I thing it is an error—in 1868. It could not have been brought in 1869; it must have been a clerical error in my book.

273 Q. You think the suit was brought in the spring of 1868?

A. Yes, sir; and we were employed a short time before the suit was brought.

Q. When was that decision in the Supreme Court upon the amnesty question?

A. I cannot remember.

Q. It was long after that suit was brought?

A. Oh, yes, sir; it was several years after the Lamar suit had been brought.

Q. How about keeping that case on the docket with the rulings of the court, and the law as it then stood?

A. Well, sir, M'r Lamar was unwilling to make the jurisdictional affidavit that he had never given aid or comfort to the rebellion, and I drew up a circumlocutory affidavit, stating that he had signed and taken the amnesty oath, and that he had kept it; and that under that amnesty oath he was relieved from all imputation of having aided the rebellion, and therefore he swore in legal intendment he had never given aid or comfort to the rebellion. The attorney for the United States at once moved to dismiss the petition, because it was not properly verified. I knew the court would decide the point against me, and I took leave to amend my affidavit, but I did not amend it at that term of court at all; and at the next term of court, he moved for a rule upon me to amend my affidavit within thirty days. I then filed another petition, in which I merely varied the form and not the substance, and was as long about it as I could be, and then he moved to dismiss that peti-

tion. Then I took leave to amend the affidavit, and we ran along that way, I think, about two years, or two years and a half, until the "Klein" case was about to be tried in the Supreme Court, and I got him then to agree that he would not bother me any more until the Supreme Court decided the question. It was a verbal stipulation merely, and I kept the case on the docket in that way, simply by lagging back all I could. That is about the fact, as I remember it now.

Q. When did you take your testimony in the case, or what testimony was taken in the first place?

274 A. Well, sir, the testimony in the case is extremely voluminous; it covers about 500 pages of printed matter. I did not take any testimony for, I should think, a year or two. Then some testimony was taken, and it followed along at irregular intervals down till near the time of trial. A great deal of the proof in the case was documentary proof in the department.

Q. When was the call for evidence before the departments made?

A. There is always a call for evidence made as soon as a petition is filed. They send one up formally at once.

Q. Does the court do that?

A. The clerk does that of his own motion. June 16th, '69, appears to be the first time we filed depositions. They might have been taken some little time before that.

Q. Does the docket show subsequent filing?

A. Yes, sir. Again in June, two other batches were filed. Again in June there seem to have been a great many depositions filed, in June, 1869. In October, '71, there was a reply of the War Department filed, which I believe is one of the voluminous ones. November 8th, '71, we got an order on the Treasury Department, allowed; December, '71, an order on the State Department was allowed. March, '72, the Treasury Department filed a report. Do you want me to go on? it is quite voluminous. It amounts to a substantial copy of the docket entries. Perhaps a copy of the docket entries had better be put in. It is very voluminous, and covers several pages of this book. There is no use in my reading them. Will not that do just as well?

COUNSEL. Yes, I think so. I want to know when Judge Hughes withdrew from the case?

A. January 9th, 1873. That was the time the motion of withdrawel was filed. It was allowed the same day.

Q. I want to know if all the evidence on your side of the case had not been filed before the withdrawal of Judge Hughes?

A. All the depositions had been filed. There was a return from the Treasury Department which might be called evidence, filed afterwards.

275 Q. The call had been made before?

A. No, sir. The call was made after.

Q. What was the date of the call?

A. March 8th, 1873. It was filed May 2d, 1873.

Q. What was the date of the judgment?

A. June 2d, '73.

Q. That evidence from the Treasury Department was all the evidence that as put in the case after the withdrawal of Judge Hughes?

A. I believe it was.

Q. Did Judge Hughes have charge of the case at one time in the Court of Claims, and have some amendments made to the petition?

A. Judge Hughes had something to do with the case during my absence, and asked leave for some amendments to the petition, but those

amendments were not made. Mr. Lamar wanted to bring in a large additional claim, but the statute of limitation had then barred any new claim, and Judge Hughes attempted to have amendments made to the petition which would embody those claims.

Q. That was while you were absent in Europe?

A. That was while I was absent, I think, in Europe. Either while I was absent in Europe, or while I was absent up at the springs. It might have been while I was at the springs.

Q. Do you remember what year it was?

A. I think it was in April, 1872, from the entry here.

Q. Then it was while you were in Europe?

A. Yes, sir. I afterwards did file an amended petition by leave of the court. It was not based upon this order obtained by Judge Hughes.

Q. Upon leave obtained at another time?

A. Upon leave obtained subsequently. There had been so many amended petitions in the case, that before we went to trial I filed a substitute for all of them; made a new petition.

Q. After the decision in the Kline case, there was no longer much difficulty about this case—the Lamar case?

276 A. Not if the law should be allowed to take its course strictly, though the government claimed to make a very desperate fight on the facts. I was well enough informed about the facts to know that Mr Lamar was right upon them, and the doubt in my mind was upon the interference with the course of law.

Q. You did not have any trouble about your case, and you did not apprehend any trouble except from the interposition of Congress, or some of the officers of the government, on account of his extremely offensive disloyalty?

A. The trouble after Judge Hughes retired grew out of an attempt by the executor of Mr Lamar's old partner, one Cheever, intervening in the case, and claiming that one-third of it belonged to him. That gave rise to a very troublesome and annoying controversy, which was before the court for several days, and was argued with great pertinacity on the other side. We finally succeeded in throwing them out of court; Mess'rs Bartley & Casey appeared on the other side.

Q. Between your client, Lamar, and the government, there were no questions to settle after the decision in the "Kline" case, except the question of fact, was there?

A. There was no question of law which could arise in the case after the settlement of the "Kline" case, and the other amnesty case. Ours was not exactly like the Kline case, but the Kline case and those occurring soon after covered our case.

Q. All that had been before Judge Hughes' withdrawal from the case?

A. I think it had been. Perhaps the last one of that series had not been decided. Most of them, I think, had been settled.

Q. All that settled your case—the Lamar case?

A. Unless it be one or two.

Q. Then there was no great amount of preparation to make after Judge Hughes' withdrawal. The case was substantially prepared for trial at the time of Judge Hughes' withdrawal?

277 A. The case, so far as the law was concerned, did not require very great labor after Judge Hughes' withdrawal.

Q. And your evidence was all?

A. The evidence was all in; the preparation of the case for trial was exceedingly laborious. That is, in going through the evidence. There

was an immense amount of testimony, as I say, something like five hundred pages of printed testimony, and a great deal that was not printed, and it was one of the most complicated and difficult cases, so far as the facts were concerned, that I ever had to deal with, although when the case was unraveled the facts were really very clearly established.

Q. The labor that you speak of consisted in the sifting and adjusting the evidence that was already in?

A. That was the labor.

Q. And it required no very great amount of preparation to present the case to the court after you had adjusted the evidence?

A. No great amount of law, so far as the law was concerned. The same labor that always results from a case with an immense amount of evidence, and a great deal of confusion in the evidence.

Q. The case did not go to the Supreme Court?

A. No, sir; it was appealed to the Supreme Court, and the appeal was afterwards abandoned by the Attorney-General.

Q. State what fee you did collect?

A. We finally collected a fee of ten per cent.

Q. And thirty per cent. in the Martin case?

A. Yes, sir.

Redirect examination by M'r Pike:

Q. Please state what member of the firm of Hughes, Denver and Peck had the Lamar case specially in charge; and what aid and assistance was contributed by Judge Hughes, as well before as after his motion of withdrawal.

278 A. I had the Lamar case specially in charge from its beginning. Of course while I was in Europe, and while I was sick, I did not attend to that or any other business. After I resumed business at the office, which was in the fall of 1872, I again resumed charge of the case. After that General Denver rendered considerable assistance to me—as he did with other cases; but I think I had the case specially in charge. Judge Hughes never rendered any services in connection with the case to my knowledge, excepting with regard to asking leave to amend the petition, and perhaps preparing the amendments that he desired to make.

Q. Are those the amendments referred to which you state on cross-examination were not used?

A. Yes, sir; those amendments were not used.

Q. I wish to call your attention to the latter part of that interrogatory, as regards the assistance rendered as well before as after the withdrawal. I want to refer to both.

A. As I have before testified, he rendered no service whatever after the withdrawal. I am quite certain, if he had rendered any such service, I must have known it, because from that time on I was continually at work at the case.

M'r ROANE. It is not claimed that he did render any afterwards.

Recross-examination by M'r Henkle:

Q. You say now, M'r Peck, as you said the other day, that evidence doesn't go into this case; you had charge of the business generally in the Court of Claims?

A. Yes, sir; I did up to the time I was taken sick.

Q. When was that?

A. It was the 5th of February, 1872.

Q. Perhaps it had better appear in this deposition. You then went to Europe and returned?

A. I then went to Europe, and returned July 1, '72, and was in Washington for a short time, being far from well, and went to the
279 springs, and remained there pretty nearly all that summer. I didn't do much work in the office until fall, and from then on my work was pretty light.

Q. You returned then, and resumed work before the meetings of the Court of Claims?

A. Yes, sir, but not to the same extent as formerly—only to a limited extent. But I did take rather special charge of this Lamar case, working on it as much as I was able to.

Q. Do you know that Judge Hughes and Lamar had many consultations about the case before their quarrel and up to that time?

A. M'r Lamar didn't so represent it. One of his complaints made to me was that he never could see Judge Hughes.

Q. I am merely asking you if you know yourself that they ever had consultations. If you do not, why so state?

A. I have no personal knowledge of their having had personal consultations—nothing but what the parties told me.

Q. How was it about you and the judge? Did you confer about the case, during its progress at its different stages?

A. I cannot remember of an instance of my conferring with him about it.

By M'r PIKE: Please state if Judge Hughes' motion for withdrawal was made on account of any disagreement between him and the other members of the firm of Hughes, Denver & Peck; or was it because of a disagreement between himself and M'r Lamar?

A. It was entirely owing to a disagreement between himself and M'r Lamar. I never knew or heard of any controversy between Judge Hughes and the other members of the firm in relation to the case.

CHARLES F. PECK.

Sworn and subscribed to before me this 5th day of September, A. D. 1874.

JAS. O. CLEPHANE,
*Examiner.*

280 *Deposition of J. W. Denver, for defendant.*

WASHINGTON, D. C., *September* 4, 1874.

J. W. DENVER, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by Mr. Luther H. Pike:

Q. Please state in detail what was the connection of the firm of Hughes, Denver & Peck with the Lamar cotton case pending before the Court of Claims.

A. The statement as made by Mr. Peck of the connection of the firm of Hughes, Denver & Peck with the case, I have heard, and it is as I recollect it. During the time that Mr. Peck was absent in Europe, or rather after he was taken sick, Judge Hughes took charge of the Lamar case, and there were notices given to take depositions here at Washington. I was attending to other matters, and gave the case no attention at all. After the adjournment of the court one day, M'r Lamar enquired for Judge Hughes. He was not there and had not been in court that day. He then informed me about the notice for taking depositions.

He said he had his witnesses there from New York, and from Savannah, Georgia, and they must be taken; and he wanted me to attend to it for him. I objected to it, because, as I told him——

M'r HENKLE. Was Judge Hughes present at that time?

A. No, sir.

M'r HENKLE. Excuse me; but I must object to the testimony unless M'r Hughes was present.

WITNESS. I objected to it for the reason that Judge Hughes was very peculiar, and I was afraid that I would offend him if I interfered in a case that he had the control of. Upon inquiring, I found that he had gone on a fishing excursion that day, and was not in the city.

281 The witnesses were here at a heavy expense to the claimant, and, under the circumstances, I undertook to attend to the taking of the depositions and commenced that day and finished the next day. In reference to the motion that was made to amend the petition by Judge Hughes, M'r Peck has already explained it. After M'r Peck's return he again took special charge of that case, and with the exception of some little work that I may have done in it occasionally, he had the entire control. I know of no work done in the case at any time by Judge Hughes, except as here stated. He never consulted me about his withdrawal from the case, nor ever mentioned it to me; nor did he ever tell me he was dissatisfied with anything in connection with it. I believe that is all I know about it.

Cross-examined by M'r Henkle:

I only want to ask you one question; that is, at the time of his withdrawal from the case, you and the judge were not on speaking terms, were you?

A. I think not.

J. W. DENVER.

Sworn and subscribed to before me this 5th day of September, A. D 1874.

JAS. O. CLEPHANE,
*Examiner.*

282 In the supreme court, District of Columbia.

ARCHIBALD ROANE, EXECUTOR OF ESTATE OF James Hughes, dec'd, *vs.* CHARLES T. PECK ET AL. } In equity. No. Doc.

NORTHERN DISTRICT OF ILLINOIS,
*City of Chicago, ss:*

Be it remembered, that an examination of witnesses begun and held on the tenth day of August, A. D. 1874, when the within deposition was taken; I, Laurence Proudfoot, a United States commissioner, did cause to be present, in the city of Chicago, in said district, Ebenezer Peck, to testify on the part and behalf of the defendants, in a certain cause now pending in the Supreme Court of the District of Columbia, wherein said Archibald Roane, executor, &c., is complainant, and Charles T. Peck, et al., are defendants, under and by virtue of the order. Interrogatories and cross-interrogatories hereunto attached.

LAURENCE PROUDFOOT,
*U. S. Commissioner, Northern District of Illinois.*

ARCHIBALD ROANE, EXECUTOR OF THE LAST will James Hughes, deceased, plaintiff,
*vs.*
CHARLES F. PECK AND JAMES W. DENVER, defendants.
} No. 3706. Eq. Doc. No. 13.

The parties to this suit, come by their solicitors, and file their interrogatories and cross-interrogatories to be propounded to Ebene-
283 zer Peck, residing at Chicago, Illinois, a witness in behalf of the defendants, and thereupon, and by consent of the parties, it is ordered this 7th day of July, 1874, that the testimony of the said Ebenezer Peck, upon such interrogatories and cross-interrogatories be taken at any time and place that may be convenient, before any commissioner of any court of the United States, at Chicago, or elsewhere, without notice, or other commission, than a copy of this order, accompanied by copies of said interrogatories and cross-interrogatories, and be returned by such commissioner, with the same, by mail, to the clerk of this court, with due certificate and authentication.

By the court.

A. W.

(Endorsed:) 3706, Eq. Doc. 13. Roane, executor, v. Peck & Denver; order No. 2. Filed July 7, 1874. R. J. Meigs.

I certify that the foregoing is a true copy of the original on file and of record in said court.

Witness my hand and the seal of said court, July 14, 1874.

[SEAL.] R. J. MEIGS, *Clerk.*

In the supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR OF THE ESTATE of James Hughes,
*vs.*
CHARLES F. PECK AND JAMES W. DENVER.
} In chancery, No. 3706.

*Interrogatories to be propounded to Ebenezer Peck, a witness to be examined on behalf of the defendant James W. Denver.*

Interrogatory first. Where were you in January, 1873, and what duties were you performing at that time?

284 Interrogatory second. Please to examine the annexed certified copy of a motion made in the case of Gazaway B. Lamar v. The United States, No. 3222, in the Court of Claims, and state if you were the judge who allowed such motion.

Interrogatory third. State if at the time such motion was presented and allowed any declarations were made by the decedent Hughes concerning the said case, and his withdrawal therefrom; state particularly whether any allegations were made concerning the merits of the claim, or the character of the claimant, or any interest which the said Hughes had in any fee to be paid in the case.

Interrogatory fourth. State if at any time you heard the said decedent, Hughes, make any such declarations as are referred to in the third interrogatory; and, if yea, state them fully.

Interrogatory fifth. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of

this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

PIKE & JOHNSON,
*Solicitors and Defendants.*

JULY 6th, 1874.

(Endorsed:) 3,706 Eq. Roane v. Peck Interrogatories filed July 7, 1874.

I certify that the foregoing is truly copied from the orignal on file and of record in said court, July 14, 1874.

R. J. MEIGS, *Clerk.*

GAZAWAY B. LAMAR
*v.*
THE UNITED STATES. } No. 3222.

Now comes James Hughes, one of the attorneys of record in this case, and asks leave to withdraw his appearance herein.

JAMES HUGHES.

285 G. B. LAMAR
*v.*
THE UNITED STATES. } No. 3222.

Motion to withdraw appearance as attorney, filed January 9, 1873.
A. & C.
Allowed 9th January, 1873.

E. PECK, *Judge.*

CLERK'S OFFICE, COURT OF CLAIMS.

I hereby certify that the foregoing are true copies of the original mo tion and of the endorsements therein on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court this 22d day of June, 1874.

[SEAL.] ARCHIBALD HOPKINS,
*Chief Clerk Court of Claims.*

(Endorsed:) 3706 Eq. Roane v. Peck. Copy of records of C't Claims. Filed July 7, 1874. R. J. Meigs.

I certify that the within are truly copied from originals on file and of record in the supreme court of the District of Columbia, in the equity cause depending therein No. 3706. July 14, 1874.

R. J. MEIGS,
*Clerk of said Supreme Court, D. C.*

286 In the supreme court of the D. of C.

ARCHIBALD ROANE, EXECUTOR OF THE ESTATE of James Hughes,
*v.*
CHARLES F. PECK & JAMES W. DENVER. } In eq. No. 3706.

*Cross interrogatories to be propounded to Ebenezer Peck, a witness to be examined on behalf of the defendant James W. Denver.*

Cross-interrogatory first. Please state whether, as judge of the Court of Claims, you sat in the hearing of the case of Gazaway B. Lamar v. The United States, No. 3222.

Cross-interrogatory second. Please state whether the allegations, if any, made by decedent, Hughes, to you when you allowed his motion of withdrawal from the case made any unfavorable impression upon your mind as to the merits of said case and the character of the claimant, and whether you considered such allegations of sufficient importance to report to the other judges of the Court of Claims, and, if so, state fully what impression was made upon your mind and what you reported to the other judges. Also whether said Hughes did not seem to be under the influence of passion when he made such allegations, if any were made.

Cross-interrogatory third. Please state, in case any declarations were made by said Hughes as to the fee in said case, why such declarations were made, whether in reply to a question or not, and did such declarations properly pertain to the motion of withdrawal then pending before you for allowance.

Cross-interrogatory fourth. Please state if at any time Charles F. Peck or J. W. Denver ever expressed to you in conversation or otherwise any want of confidence as to the merits of the claim of the said Gazaway B. Lamar or as to his character as a man.

287 Cross-interrogatory fifth. Please state anything you may know to the advantage of the plaintiff pertaining to the case of G. B. Lamar v. The United States.

JOS. H. BRADLEY, J'R,
*Solicitor for Plaintiff.*

(Endorsed:) 3706. Eq. doc. 13. Cross-interrogatories to Ebenezer Peck. A. Roane, ex'r, v. Denver & Peck. No. 3706. Filed July 7, 1874. R. J. Meigs.

I certify that the foregoing writing copied from originals on file and of record in the supreme court of the District of Columbia in equity cause 3706 depending therein. Witness my hand and the seal of said court July 14, 1874.

R. J. MEIGS, *Clerk.*

*Deposition of Ebenezer Peck.*

In the supreme court of Dist. of Col.

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

I hereby certify that on the tenth day of August, A. D. 1874, before me, Lawrence Proudfoot, a commissioner of the United States for the northern district of Illinois, at Chicago, in said district, between the hours of 10 a. m. and 2 p. m., was produced to and personally came before me Ebenezer Peck, witness on behalf of the defendants, to depose in a civil cause depending in the supreme court of the District of Columbia, on the chancery side of the said court, wherein Archibald Roane, executor of the estate of James Hughes, is complainant, and Charles F. Peck and James W. Denver are defendants, whose testimony is alleged to be material in said civil cause on behalf of the said defendants.

288 And the said Ebenezer Peck, being of lawful age and sound mind, and being by me first duly examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said civil cause, depose and say:

EBENEZER PECK, being first duly sworn:

1st. In answer to first direct interrogatory, says:

A. I was in Washington, in January, 1873, and was performing the duties of a judge of the Court of Claims.

2d. In answer to second interrogatory, witness states:

A. I was the judge that allowed such motion.

3d. In answer to third interrogatory, witness states:

A. At the time of the allowance of said motion, declarations were made by the decedent, Hughes, concerning said case and his withdrawal therefrom; he also made allegations concerning the merits of the claim, and the character of the claimant, also about the fees in which he, said Hughes, had an interest in said .

4th. In answer to fourth interrogatory, witness states:

A. This was the only time that he spoke to me about the matter. Before allowing the motion, I enquired of him if he had given his client notice of his intention of withdrawing from the case; he replied that he had, but whether or no, he would not act further in the case; he denounced his client as a great rascal; his precise words I do not remember; he also said that the case was altogether without merit, and was a fraudulent case, or words to that affect, and he had decided not to be involved in a case of so scandalous a character and for so worthless or unworthy a client. In regard to the question of fees in the case, my recollection is, that he declined to have any interest in the case, or to take fees, because he believed that the case was a corrupt one, and not likely to succeed, and that he would not lose much by his withdrawal from the case.

5th. In answer to the fifth interrogatory, witness says:

A. I know of nothing further except what may be called out in the cross-examination.

289 Cross-examination:

1. X Q. In answer to first cross-interrogatory, witness states:

A. I did not, nor was I in Washington when the case was heard and decided, nor did I take any part in any way with it.

2. X Q. In answer to cross-interrogatory, witness states:

A. The allegation of the decedent, Hughes, did make an unfavorable impression on my mind both as to the merits of the case and as the character of the claimant. I cannot now recollect whether or not I repeated the conversation of the decedent, Hughes, to the other judges—probably I did; but they doubtless will remember whether I did or not, more accurately than I. As I have already stated, the impression made upon my mind was unfavorable to the claimant; but as I made it a rule not to take part in any case in which my son, Charles F. Peck, one of the defendants herein, was employed as attorney or solicitor, the impression upon my mind was not so deep as to make me retain it; what I reported to the other judges, if anything, can be best ascertained from them.

When M'r Hughes made these allegations to me, he did not seem to be any more under the influence of passion than he was generally when I met him.

3. X Q. In answer to 3d cross-interrogatory, witness says:

A. My impression is that the conversation or declaration made by said Hughes, as to the fees in said case, arose out of the fact that I required a notice to be given to his client of his withdrawal from the case; they did not properly pertain to the motion for withdrawal presented to me for allowance, but grew out of his statement hereinbefore alluded to,

of the rascality of his client, and the case itself, and that he was at variance in some way with the client; what was said in that regard was voluntarily said by him, and the burden of the point was, that he would not be tainted by having anything to do with or by receiving fees in
290 such a case. I think that this is an improper question to have been propounded to me, but I have answered it, notwithstanding. Mr Hughes had been on the bench with me, and was there when I was appointed judge, and spoke consequently more freely to me than he would have done about matters, and probably spoke of his fees without any enquiry from me, growing out of the discussion between us as to the propriety of notifying his client of his withdrawal.

4. X Q. In answer to 4th cross-interrogatory, witness states:

A. Neither Mr. Peck nor Mr. Denver ever expressed to me in conversation or otherwise any want of confidence as to the merits of the claim of said Lamar, or as to his character as a man. I notified Mr. Peck that I had allowed the motion in question, as I had told Mr. Hughes I should so notify one or the other of them, in order that the interests of Mr. Lamar might be protected, and that Mr. Lamar might make any objection that he chose to make in the matter, but not for the purpose of advancing the interest of either Mr. Denver or Mr. Peck.

5. X Q. In answer to the 5th cross-interrogatory, witness states:

A. I have nothing further to say.

E. PECK.

I further certify that the foregoing deposition of Ebenezer Peck was then and there reduced to writing by me in the presence of the deponent, and to him by me carefully read over, and by him subscribed in my presence after having been so reduced to writing.

I further certify, that the reason for taking said deposition was and is that the deponent lives at Chicago, in the State of Illinois, more than one hundred miles from the District of Columbia, where said civil cause is appointed to be tried, heard.

I further certify, that said deposition was taken by me under and by virtue of the order, agreement, and interrogatories hereto attached, and that no one but myself and the witness was present at the time of the taking of the same.

291 I certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the event of this cause.

I further certify, that it being impracticable for me to deliver said deposition with my own hand into the court for which it was taken, I retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by me, to the said court for which it was taken, and to remain under my seal entire until opened.

I further certify, that the fee for taking the said deposition, amounting to ten (10) dollars has been paid to me by the defendants, and that the same is just and reasonable for the services performed.

Given under my hand and seal at the city of Chicago, northern district of Illinois, this 24th day of August, A. D. 1874.

[SEAL.] LAWRENCE PROUDFOOT,

*Commissioner of the United States for the District and Circuit Courts of the Northern District of Illinois.*

NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that I am well acquainted with the handwriting of Lawrence Proudfoot, whose name

is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was at the time of signing the same, and is now, a United States commissioner, duly appointed, qualified and commissioned by said court, and that as such, full faith and credit are and of right ought to be given to all his official acts.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court at my office in Chicago, in said district, this 26 day of August, A. D. 1874.

[SEAL.] W. H. BRADLEY, *Clerk.*

292 *Depositions.*

In the supreme court, District of Columbia.

WASHINGTON, D. C., *November* 28, 1874.

A. ROANE, EXECUTOR OF JAMES HUGHES, *vs.* DENVER & PECK. } No.

Commission met pursuant to notice, at the law office of Joseph H. Bradley, esq. Present, Joseph H. Bradley, esq., counsel for plaintiff, and General Albert Pike, counsel for defendant.

The examination of witnesses was proceeded with as follows:

CHARLES F. PECK, recalled by plaintiff.

Examined by Mr. Bradley:

Q. Were there not two dissolutions of that firm of Hughes, Denver & Peck; one in '66, and one in '67?

A. There was an earlier dissolution that occurred than the one that has been spoken of in this controversy heretofore; I do not think it was as early as '66, though, for the firm was only organized in '65. I think it must have been two or three years after that. General Denver states it was the first of November, '66. I only state from my general recollection.

Q. At whose instance was it renewed?

293 A. Judge Hughes first spoke to me upon the subject, and requested me to consent to a renewal of it; stating his reasons. Whether he and General Denver had had any prior conversation on the subject, I do not know.

Q. Didn't you get your father to speak to Judge Hughes before that time about the renewal?

A. Oh, no; most decidedly not. If he did speak to Judge Hughes on the subject, it was without my knowledge, or consent, or sanction, in any way, either before or after. I never heard that he did so.

Q. How long did that dissolution continue?

A. Not for a very long time; perhaps a month or two.

Q. Did you then have any agreement as to the mode of settling up the business of the firm?

WITNESS. Do you mean when we renewed the partnership?

A. Oh, no; when you dissolved it at that time?

A. The first dissolution was made by a memorandum in writing. I think the memorandum states that each partner should give his personal attention to closing up the business of the firm; that is the expression as I remember it.

Q. At whose instance was that dissolution effected; do you remember?

A. My recollection is that Judge Hughes insisted upon a dissolution of the firm for the purpose of getting rid of an obnoxious person, who was connected with the firm.

Q. Was that Mr. John S. Williams?

A. Yes, sir; that is the person I refer to.

Q. Was he a partner in the firm?

A. That has been a disputed question; he claimed that he was; Judge Hughes claimed that he was not; but at this time, Judge Hughes stated that he was determined to get rid of Williams, and not have him in his office, as the easiest and simplest way of getting rid of him, suggested that we dissolve the firm. I signed the agreement of dissolution, understanding that to have been the controlling motive.

291 Q. When you reformed this partnership, there were still no articles of agreement between you?

A. No, sir; the partnership was reformed without any written articles of agreement.

Q. Do you remember whether you or Judge Hughes, before you formed this new partnership, discussed the question of partnership together, leaving out General Denver?

A. The matter was discussed between us. Judge Hughes sent for me to go up into his room, and said that he desired to have a conversation with me upon this subject. He then stated that he desired us to go into partnership with him, using language which was exceedingly complimentary, which I will not repeat, and urged me strongly to unite in a partnership with him.

M'r PIKE. After this first dissolution?

WITNESS. Yes, sir; he then said that he supposed we would take the general with us; that if I had no objections to him, he preferred that course himself, and waited to see if I had any objection to express. I told him that I had none; that I approved of it, and he then left. Soon after that he left the city, and told me to do as I thought best about speaking to General Denver on the subject myself. He said I could either do it myself or leave it to him to do it.

Q. You did not yourself make any objections to General Denver coming into the firm?

A. I did not; on the contrary, I approved of the suggestion.

Q. After you had formed the second partnership what portion of the business was committed to the charge of General Denver?

A. I do not think any change whatever occurred. The same business that he had been in charge of before was continued by silence rather than by any declaration. There was nothing said on that subject whatever. That is the best answer.

Q. If I understand you aright you took charge of a particular branch, Judge Hughes one, and General Denver the other; am I right?

295 A. There never had been any express division of business between us, but we had rather fallen into the way of taking charge of certain matters. I had taken charge of a certain line of business by the acquiescence of my partners; and each of my partners, to some extent, had done the same.

Q. You had charge of the business in the Court of Claims; General Denver before the departments, or how?

A. Yes, sir; that would describe it in a general way.

M'r PIKE. M'r Bradley, that has all been testified to in detail.

M'r BRADLEY. That was my impression, though I have not read the testimony.

Q. Now, as to the business in the departments; was that successfully prosecuted and carried on or not?

A. Our success in the departments was reasonable, I think. Of course there were a good many cases that we could not find any remedy for, and that had been lying over. I think our success was reasonable.

Q. Did you attend to that branch of the business at all yourself?

A. Scarcely at all; I gave it scarcely any attention. It was very exceptional, if I gave it any at all.

Q. Can you state whether it was successfully prosecuted or not? that is what I want to get at.

A. I cannot state of my own knowledge that it was or was not diligently prosecuted, excepting that the results were satisfactory as could reasonably be expected.

Q. Now, as to the business before the British Commission; who had charge of that?

A. General Denver had charge of that, so far as our firm is concerned.

Q. And in regard to that how many cases were gained before that Commission?

A. Before the English Commission we were very unfortunate. Nearly all of our cases were of one class, and the points of law were decided against us. They were cases which had been before the Court of Claims, and the Commission ruled that that was a complete bar
296 to their presentation to the Commission, and that ruling rejected a large number of cases of immense amount in point of money, several million of dollars in amount. The bulk of our cases were lost there; in fact, I think all but one were lost.

Q. Did you gain more than one case?

A. I think not. I think there was only one case gained.

Q. And whose was that?

A. That was the case of Haskins.

Q. And who had charge and prosecuted that?

A. General Denver. His brother assisted him in that case, as has been heretofore testified to.

Q. What time did you go to Europe?

A. In March, eighteen seventy-two.

Q. You were absent how long?

A. I returned the first day of July.

Q. You were over three months away?

A. Yes, sir; three months and a half.

Q. Before you left for Europe did you not prepare cases that would come up in the Court of Claims during your absence.

A. I prepared some of them.

Q. Do you recollect any that you did not prepare?

A. No, sir; I could not tell. That came up once before in the course of my examination; there seemed to be a difference of recollection between M'r Roane and myself as to what I had stated to him. He says that I told him all the cases had been prepared by me. My recollection is that I told him that all the cases on the docket then pending. But whether I said so or not, it certainly was not true that I had prepared all the cases.

Q. You do not recollect any, however, that you had not prepared?

A. No, sir; I could not recall any either way at this period without having my memory refreshed by the record and books.

Q. Can you recall any cases in which General Denver prepared briefs and argued cases before the Court of Claims?

297 A. I was in Europe at the time. I know generally there were a number of such cases from information and belief, but I cannot specify them.

Q. I do not mean in that time only, but all the time while the firm existed. Do you remember any case in which he prepared a brief upon the law questions?

WITNESS. Before any tribunal, do you mean?

Yes, sir; I say before any tribunal.

A. I remember one important case, the Norris case, where I am quite certain he did.

Q. Where was that?

A. In the Court of Claims. Up to the time I was taken sick he had very little to do with the Court of Claims business. I do not remember of any other case in the Court of Claims in which he prepared a brief before my sickness.

Q. Any other before any other tribunal?

A. I suppose he did before the English Commission. I never examined to see, but he had charge of those cases, and I presume he did there—a large number of cases, and before the departments there were a great many cases, of course, that were argued in writing.

Q. Questions of law as well as questions of fact?

A. I could not answer the question any more definitely, because I have not examined to see. I always supposed that he did do so, but my knowledge is general on the subject and not specific and particular. Cases were presented to the departments, and they were argued there by him, as I always supposed.

Q. I want to ask you in reference to one particular case—the La Plante case. Do you remember how that came to your firm?

A. I supposed that that case came to the firm through Denver and Turk; but I have no personal knowledge, because I was not present when the case was brought to the office, or when any of the contracts with reference to it were made. My understanding of it always was that it was a case that came into the office through Denver and Frank Turk—I mean Arthur Denver.

298 Q. Do you recollect how it was entered on the books of the firm?

A. I do not. The books can be produced and show for themselves. I do not remember now.

Mr. BRADLEY. I wish you would just make an extract from them and append that extract to your testimony.

A. I have no objection to doing that.

Q. When you came to the settlement of that case, how were the fees distributed?

Mr. PIKE. That has all been testified to.

WITNESS. I have no objection to answering.

Mr. ROANE. General Pike interrupted Mr Peck while he was testifying on that subject, and I did not care to press him.

WITNESS. The fees were equally divided between Hughes, Denver, and Peck on the one side, and Arthur Denver and Turk on the other side; but Arthur Denver had bought out Turk's interest, as I was advised, and, therefore, the half going to Denver and Turk was paid to Arthur Denver.

Mr. PIKE. There was a question raised as to whether Arthur Denver ought to pay that. That matter was talked about, but it was abandoned.

Mr. ROANE. What was abandoned?

Mr. PIKE. I mean the subject was just dropped.

Mr. ROANE. Yes; Mr. Peck did not wish to testify on the subject, and I did not press it at all, because I do not think it necessary to the case.

WITNESS. I simply made the objection at the time that it was a collateral inquiry, not part of the case.

Mr. PIKE. I know you did not. We talked about it a great deal, and what was said was all taken down.

By Mr. BRADLEY:

Q. State, if you please, the history of that La Plante case, and the manner in which it was—the fees distributed. You have gone so far as that. Now state whether there was a demand made upon the firm
299 afterwards, and submitted to you by somebody else, for a portion of the fees in that case.

A. The first part of that question I understand I have answered.

Q. I think so. You said one-half was paid to Arthur Denver for himself?

A. Yes, sir; after that a certain Mr. Hunton—Thomas Hunton—of New Orleans, for the use of Chadwick, claimed that he was entitled to half the fee; and the suit which he brought against the firm of Hughes, Denver and Peck was compromised by the payment of $4,500, his claim being very much larger. I never understood exactly how Mr. Hunton was going to base his claim; whether as a royalty upon our services because he brought the suit to us, or as joint attorney because he had rendered services in the case. He had rendered some very trifling services, although I am in doubt about that.

Q. What was the rule of your office as to rate of interest allowed out of the office, toward parties who brought the case to you?

Q. We never had a rule upon that subject. Sometimes claims of that kind had been made, but I myself never consented or ever agreed that anybody should have any right in any case by virtue of the firm having been employed; and whenever I have consented to any such thing, it has been under some constraint or duress that I could not very well avoid. We have frequently had arrangements with parties who were employed in suits, and associated us with them—we dividing the labor and the fees. If there is any exception to this rule it may be in a certain line of employment that we once had from the Treasury Department for the recovery of Confederate property. There, sometimes, interests were agreed to be given to parties for furnishing information.

Q. At whose instance was the firm finally dissolved—the second dissolution?

A. At my instance.

Q. Do you remember now the causes which led to it; that you assigned for it?

300 A. I did not assign any cause for it.

Q. You just demanded the dissolution?

A. I did not demand it; I requested it and it was acceded to.

Q. Do you remember whether you said the whole labor of the office was thrown upon you, or something to that effect, as one of the reasons?

A. My recollection is, I was very careful not to give any reason at all. I do not think I gave anybody any reason whatever. I was sometimes urged to give reasons, and I declined to give any reason; any further than I remember once stating that I had more work to do than I could stagger under and I wanted to relieve myself. I was doing more work than I thought I was capable of doing, not more than I was willing to, but more than my health and strength would permit of my doing; but

I did not give that as a reason for dissolving the firm, for I gave no reasons; no reasons were necessary.

Q. At that time was General Denver assisting you as thoroughly as he could?

A. I could not say that General Denver was assisting me at all, scarcely. The work that I had charge of was somewhat independent. Of course there were cases where we conferred together, but, as a general rule, I attended to my business without what would be called assistance, and as there was really not much that was common to us both in the work I did, although at times the rule was otherwise.

Q. Except when you were in Europe, who prepared your law-briefs for the Court of Claims and for the Supreme Court?

A. With few exceptions I prepared all the briefs in the Court of Claims and some of those in the Supreme Court, and Judge Hughes prepared some in the Supreme Court. Up to the time that I was taken sick, I do not think General Denver did much labor in either of those courts.

Q. You do not know anything that was done by him while you were sick?

301 A. I do not know except from the results, and papers, and information gotten afterwards. That is while I was away. I know what was done by him after I got home.

Q. After you got home, did he then prepare any of the law-briefs in the Court of Claims?

A. I think he did a considerable number of briefs, involving questions of law and of fact combined; such briefs as were necessary for the presentation of cases. I could not state in what proportion those questions were combined.

Q. Did he argue any cases in the Court of Claims?

A. I think he did.

Q. That is, after your return from Europe?

A. Well, the term of the Court of Claims for the winter of 1871 and 1872 was over before I returned from Europe. There was no court until the following winter, December, and in the winter of 1872 and 1873. I think he did present a number of cases there.

Q. What I want to call attention to is whether the court had not adjourned before you went to Europe and did not meet until after you got back?

A. No, sir; it was in full blast when I went to Europe. I went to Europe in March, and the court, I think, continued until June. Really you might say the heaviest part of the business occurs about March. February, March, April, and May are the busiest months there, and I was busy for months, perhaps, before I went to Europe, so that I did nothing. General Denver's charge of those cases does not date from my departure for Europe, but from my sickness which commenced, I think, on the 6th day of February. It is in the testimony.

M'r PIKE. Everything is in the testimony about how the cases were attended to, and so on.

WITNESS. It was about that time I was taken sick. It was very sudden, and I attended to no business whatever until after my return from Europe. I was even forbidden to talk about business.

302 Cross-examination by Mr. Pik:

Q. Were there any written articles of partnership in which Williams was made a partner, or an interest given him?

A. No, sir. The contract between the firm and Williams was verbal, and was made by Judge Hughes.

Q. How did it happen that the old firm was not immediately re-established after you got rid of him?

A. I do not know why it happened. The first steps taken towards it that I had any knowledge of was the time Judge Hughes sent after me, as I before stated, and in that connection I wish to testify that I never directly or indirectly, in person, or through any other person, made the slightest solicitation towards a partnership with Judge Hughes.

Mr. PIKE. You mean from the beginning?

A. No, sir; I am speaking now of this renewal.

Mr. ROANE. The first dissolution or the second?

A. The first dissolution; that whatever was said came altogether from Judge Hughes. I re-entered the firm upon his earnest solicitation.

Mr. PIKE. Was Judge Hughes here when that dissolution took place?

A. Yes, sir.

Q. Did he remain here from that time until it was renewed?

A. I think he did. I think he went away very soon after his conversation with me, that I refer to, if that can be called a renewal.

Q. About pressing you to renew it?

A. Yes, sir.

Q. When it was renewed, it was simply a re-establishment of the old firm?

A. That was all.

Q. Leaving out Williams?

303 A. Williams had not been in the old firm.

Q. It was simply a continuation of it under the old articles?

A. Yes, sir; there never had been any articles; simply a continuance of it without articles.

Q. There were no articles to begin with?

A. No, sir; never were any.

General Denver informs me that when the notice of dissolution with Williams was published, Judge Hughes was absent on a political canvass in Indiana.

Q. Did Williams publish the notice of dissolution?

A. It seems to me that he did. I think he did. My recollection is that the paper had been signed and delivered, and had taken effect. Afterwards, Judge Hughes being in Indiana, Mr. Williams caused it to be published, as Judge Hughes claimed, because of some political act of his, and he said it was intended to injure him politically.

Mr. PIKE. Until the time you were taken sick, did Judge Hughes give any attention to the business of the Court of Claims, so far as you know?

A. So far as I know he gave very little, or none at all.

Q. When you were taken sick didn't the whole business of the Court of Claims devolve upon Gen. Denver?

A. Yes, sir; so far as our office was concerned.

Q. The business was managed satisfactorily to you, was it not, as a member of the firm?

A. Yes, sir.

Q. As one of the partners, had you any cause to be dissatisfied with Gen. Denver at any time?

A. No, sir.

Q. And when that partnership of Hughes, Denver & Peck was renewed, you and Gen. Denver became partners, or continued to be partners?

304 WITNESS. After the dissolution of the firm of Hughes, Denver

& Peck? O, we had never entered into any regular partnership. We have had the cases together; business together.

Q. Did you dissolve the partnership out of any dissatisfaction to Gen. Denver or not?

A. I would rather not go into that enquiry. I declined to do it before; of course I could answer that question without any hesitation, but that question leads to others, and I do not think——

Q. I only want to know.

A. I do not think I ought to be called upon; of course I can answer that question very satisfactorily, as Gen. Denver knows, but it leads to an enquiry that I do not think I ought to be required to go into.

M'r BRADLEY. If it relates to the business of the firm, dissatisfaction with the action of parties in the firm, or want of action, why, then, it is material. If it be private matters between you and Gen. Denver, of course we have nothing to say about that; but it is fair and right that we should know the grounds.

WITNESS. As I have before stated, I gave no reasons whatever for asking for a dissolution of the firm. Of course I had reasons, or I would not have taken the action. I have been frequently solicited to give my reasons, and some complaint, I understood, had been made because I did not give any reasons. I, of course, could state what those reasons were, but I prefer not to.

M'r PIKE. I do not ask what the reasons were, but only whether those reasons applied to Gen. Denver. You need not answer that unless you wish to.

A. I have no objection in the world to answering that question, if it does not lead to further questions as to excluding one, and then the other, and all that, which seems to me equivalent to calling upon me to state frankly all the reasons.

Q. I do not want to ask you any further question about it myself. I do not want to know what the reasons were, if they were not applicable to Gen. Denver. There might have been personal reasons.

305 WITNESS. If M'r Roane will consent that I may answer the question and stop right there, I will answer it.

M'r ROANE. I am going to testify myself, and state some of the reasons that you gave to me; and then you can have an opportunity to make an explanation if you choose.

M'r PIKE. Very well; let it stand in that way, then.

WITNESS. Then I will answer the question. I will state there were reasons that were personal, and not applicable to Gen. Denver at all.

By M'r BRADLEY. Q. I will ask you whether you did not state to M'r Roane, assigned to M'r Roane reasons for your desiring to have the firm dissolved, and whether those reasons did not relate to Gen. Denver's conduct and want of activity in the business affairs of the firm?

A. No, sir; I do not. I had a conversation with M'r Roane upon the subject. M'r Roane said he thought it was my duty to tell Judge Hughes frankly why it was I had dissolved the firm. He said that the judge had accused me of a want of frankness in my conduct; that I had acted without giving any reasons whatever; and that if I would state the reasons, very likely they could be removed, and urged me to go to Judge Hughes and have a frank talk with him, and state my grievances, if I had any. I told M'r Roane I could not do it. He asked me why not. I then did explain to him, confidentially, what some of the reasons were. He agreed with me that they were reasons that I could not communicate personally to Judge Hughes. I told M'r Roane that men generally acted from mixed motives, and could not always ascribe their

conduct to a single reason. I did make a complaint that I had a great deal too much work to do, more than I could do, and that I could not stand it. I made no specific complaint any further than that. I cannot recollect that Gen. Denver's attention or non-attention to business was discussed between us at all. I do not think it was, unless inferentially, of a complaint made of having more than I could do.

306 By Mr. PIKE: Q. At what time did that conversation take place; was it before or after the articles of dissolution were signed?

A. It must have been after the articles of dissolution were signed, because it was some time after the dissolution occurred. The articles were signed immediately.

C. F. PECK.

Sworn and subscribed to before me this 28th day of November, 1874.

JAS. O. CLEPHANE,
*Examiner.*

A. ROANE recalled for pla'ntiff.

Examined by Mr. Bradley:

Q. Please go on and state all you know about that dissolution.

A. I wish to state this, in the beginning, that I am very reluctant to repeat any conversation between Mr. Peck and myself; but I consider that I am forced to do so, not only by my duty as executor, but by the want of forbearance which has been shown toward me in the whole of this case, from beginning to end. Probably I can recall to the mind of Mr. Peck many things that he said to me, which may have escaped him up to this time. Mr. Peck and myself were ve y intimate. We frequently conversed upon the affairs of the firm. We walked together from the firm office to Georgetown very often. I conversed with him at his house, at his office, and elsewhere upon the subject. The second dissolution was made at the instance of Mr. Peck. He drew up a letter to Judge Hughes, which he handed to me, and requested me to present to Judge Hughes, making such explanations as I thought proper. Mr. Peck at the same time proposed that I should go with him after the dissolution, and that I should have the same salary that I was receiving from the firm. I did not make any positive answer to that prop-

307 osition. Judge Hughes at that time was absent. When he returned, I delivered the letter, and made explanations to Judge Hughes. I had come into the firm at the instance of Judge Hughes, and while I had a very great regard for Mr. Peck—a very strong personal friendship for him—yet, I considered my obligations to Judge Hughes superior to my obligations to him, and always told him so. I told him that I would not go with him without the consent of Judge Hughes. Mr. Peck stated to me the reasons for the dissolution. Those reasons were primarily neglect of business by Judge Hughes; secondly, the habits of Judge Hughes. Mr. Peck, at that time, it may be well for me to state, had just lost his daughter; had recently joined the church; was superintendent of a Sunday school, and probably his conscience may have been unusually tender. He made objections to Judge Hughes's habits, not only with regard to drinking, but other matters, which he said brought discredit on the firm. He also objected very seriously to General Denver and Mr. Arthur Denver. He said that General Denver was of no use in the firm; in fact that he was entirely useless. He used the word "drone"; that he was a drone; that he performed no labor of any consequence; that he was of no use to the firm, and that the whole burden of the business was thrown upon him (Mr. Peck); that he

had introduced his brother there, who could not be gotten rid of in any way; that he was prying, and that he opened the letters of the firm before they ever came to his (Peck's) knowledge at all, and frequently that he never saw the letters. General Denver put the correspondence of the firm in his hands, and he had access to all the books of the firm, and that this was a very serious objection to Arthur. He (Mr. P.) attempted to remove from the firm office. It was so very irksome to him, that he did not desire to remain in the same building, and proposed to remove the papers connected with the Court of Claims cases to an office occupied by Mr. Chandler. Objection was made by both General Denver and Judge Hughes to that proposition. That while he had a personal regard for General Denver as a gentleman and as a man; while he had no personal ill-feeling toward him, yet, that the presence of Arthur Denver was, to him, so obnoxious, that he could not continue the
308 partnership longer. That was one of the reasons. He said that he could not speak to General Denver on the subject, because he seemed to be as sensitive with regard to Arthur Denver, as he would be with regard to his own wife; that he could no more speak freely to General Denver about Arthur Denver than he could speak to the general about his own wife. Among the things stated to me by Judge Hughes, which, I suppose, are not admissable as evidence—I am pretty certain, although not absolutely positive about it—that Mr. Peck stated to me that he had said to Judge Hughes—I know Judge Hughes so told me—that he had said to Judge Hughes that his principal purpose in having the partnership dissolved was on account of General Denver and Arthur. Mr. Peck spoke to me frequently at that time of his attempts to buy out General Denver. It lead to some negotiations and some correspondence. Finally, General Denver refused to sell out. He told me that he had never told Judge Hughes of all the causes of the dissolution. He said that he had proposed to Judge Hughes to form a new partnership, leaving out General Denver, in case he should succeed in buying General D. out. I do not remember whether he told me—I know Judge Hughes did—that Judge Hughes had refused it; that he had refused because he would not hear of any new partnership, unless a full explanation was made of the cause of dissolution. I never communicated to Judge Hughes, to the day of his death, all the causes of dissolution. It was a matter of delicacy with me, because I was always very friendly to Mr. Peck, and I had many quarrels with Judge Hughes on account of Mr. Peck. I did not wish to and did not expose to him what Mr. Peck had said to me with regard to the matter. Judge Hughes thought that I knew the reasons and pressed me frequently to give them to him. I always refused to do so on account of my friendship for Mr. Peck.

Q. Is there any other matter that you wish to speak of?

A. I wish to say a word or two in regard to the La Plante case. I would simply state, with regard to that, that La Plante, a French citizen, had a claim for about 300 bales of cotton, taken from him at Atlanta. The case came to the firm of Hughes, Denver & Peck
309 through Mr. Chadwick, of the firm of Sykes & Chadwick, of the Willard House.

Q. State what you know yourself.

A. I have seen the records on the books. I found from the books that it came through Chadwick or Hunton, and I have a letter in my pocket from Mr. Hunton to Judge Hughes. I can say that it was always understood by me, having daily communication with all the members of the firm, and with Arthur Denver and Mr. Peck, and having

access to the books, that the case had been brought there by Mr. Turk, and I will also state that Mr. Peck frequently stated to me that such was his impression, that it had been brought by Mr. Turk; he frequently so stated to me. It was brought, I think, in 1867, and up to the time of the conclusion of the case in the Court of Claims, and after it had been appealed to the Supreme Court, and the appeal had been dismissed, and one-half of the fee had been paid over to Mr. Arthur Denver—about $14,000—I was under the impression, and Mr. Peck stated to me that he was under the impression, it had been brought there by Mr. Turk, who was one of the firm of Turk & Denver. It was always understood by me, I will state, from information and belief, that there had been a subcontract made by the firm of Hughes, Denver & Peck with Turk & Denver; and that contract provided that in all cases brought by them to the firm they were to receive one-half of the fees; and they were to receive one-half of the fee in all cases turned over to them by any member of the firm; that they were to render any services they were called upon to render by any member of the firm, in the firm cases, for which no charge was to be made; and they were to receive one-half of the fee only in cases they brought to the firm or cases which had been turned over to them by a member of the firm. That under that arrangement with Turk & Denver, as I understood Mr. Peck had stated to me he had understood Judge Hughes—but that is not evidence—but he stated to me also that he had understood the case of La Plante having been brought to them by that firm, they were entitled to one-half of the fee.

A settlement was made between Mr. Arthur Denver and Mr. Turk,
310 as appears from a copy of a paper that I have put on record as an exhibit. The La Plante case was entirely turned over to Mr. Arthur Denver, Turk relinquishing his interests in that and other cases. After the money had been divided, Mr. Turk was met by me upon the street, and stated——

M'r PIKE. I do not think that is testimony.

WITNESS. Very well.

M'r BRADLEY. Not unless you communicated it to the partners, and they acted on it.

WITNESS. Well, at all events, a controversy was raised in the firm. M'r Turk being dissatisfied with Arthur Denver's receiving so much money in that case, in which he once had an interest, the controversy was raised in the firm as to whether M'r Turk was entitled to anything in it or not. Gen. Denver stated to Judge Hughes, in my presence, that the papers had been handed to him by Chadwick, and brought to the firm. M'r Peck stated to me afterwards that Gen. Denver had stated the same fact to him, and he never knew until that time that the case had come to the firm through Gen. Denver, having always supposed, as I had, that the case had come to the firm through Turk & Denver. M'r Peck complained of this thing as unfair treatment towards other members of the firm. If Gen. Denver had turned the case over to Turk & Denver, it had been done without his knowledge, and that he thought he ought to have been consulted in regard to it, and in no other way could Turk & Denver have become entitled to any portion of the fee in the case.

Q. How was it settled?

A. One-half of the fee was paid to M'r Arthur Denver, amounting to about $14,000.

Q. How was it settled as to the firm and this claimant?

A. M'r Hunton brought a suit against the firm of Hughes, Denver and Peck for one-half of the fee, it appearing from the books of the firm

that the case had been sent by M'r Hunton to M'r Chadwick. Judge Hughes received a letter from M'r Hunton in the fall of '72, which
311 I have in my pocket, stating that he had made a demand upon Gen. Denver and M'r Peck for his portion of the fee, and had received no satisfaction from them.

Q. When was it settled—Hunton's claim?

A. I will go on to state further about it. Suit was brought by M'r Hunton against the firm of Hughes, Denver & Peck. He employed M'r Cox and M'r Payne as his attorneys. Gen. Denver and M'r Peck employed M'r Durant. Judge Hughes, having a different interest in the claim, as he conceived, employed M'r Mattingly. He intended also representing himself in connection with M'r Mattingly. The case came up for trial in June, 1873. In consequence of the absence of M'r Chadwick the case was continued. Judge Hughes and Gen. Denver and M'r Peck all went over to the court that day. I saw them going over myself. I do not know that I can properly state what Judge Hughes intended. He rehearsed to me the speech that he intended making—but that is not evidence, perhaps. Judge Hughes intended, while he acknowledged to Hunton that so far as he was concerned he recognized his claim, yet he thought any judgment that might be obtained should be paid by Gen. Denver and M'r Peck, by Gen. Denver particularly, as he had turned the case over to Arthur. I can state here, in this connection, that Arthur Denver rendered very important services in the case. He had the principal charge of it; he attended to the getting up of the testimony, and so on, and rendered pretty nearly all the services that were rendered in the case, except those that were rendered by M'r Peck in the Court of Claims. His services were very valuable, and very important in the case. The case came up a second time in November, '73, after the death of Judge Hughes, and a proposition of compromise was made; I do not know whether by M'r Peck or by M'r Chadwick, who was here representing M'r Hunton himself. I saw Chadwick and I saw M'r Peck. Both mentioned the matter to me, and I derived my information from them. M'r Peck told me it had been agreed that $4,500 should be paid for the compromise of the suit. This was stated to me verbally. I told M'r Peck in conversation—he seemed to
312 think it was important to have my consent, as Judge Hughes had set up different ground of defence from those representing him in the case, to have my consent, as the representative of Judge Hughes, to the compromise—I told M'r Peck I would give my consent, but on the express condition that in all moneys that were thereafter collected Judge Hughes' portion should be paid over to me at once.

By M'r PIKE. That is in writing?

A. I first stated to him orally.

Q. All that has been testified by you is in writing?

WITNESS. This is the history of it. Subsequently I thought that it would be best to have that understanding in writing, and I addressed a letter to that effect to M'r Peck, and requested him to show it to Gen. Denver. The compromise was made. The letter is in evidence. They never answered it. It was not necessary to answer it. They acted upon my consent, and made the compromise, but they did not turn over to me Judge Hughes' portion of the money collected.

Cross-examined by M'r Pike:

Q. Do you know that Arthur Denver agreed to that compromise?

A. I do not know, personally.

Q. You have stated, I believe, that Judge Hughes had admitted to

Hunton he was entitled to his interest in the fee. When did he make that admission?

A. Probably, I drew that from conversation with Judge Hughes, which I have not stated. I have avoided stating what Judge Hughes said to me, because it is not——

Q. What is the date of that letter from Hunton?

A. It is dated October 22d, '72.

Q. Do you know what answer Judge Hughes made to it?

A. I do not remember—yes, I think he told him to come on
313 here; that he (Judge H.) had grievances against Gen. Denver, and to come on here, and have a personal conference with him.

Q. Did not Judge Hughes admit in that answer the claim of Hunton?

A. I do not remember that. I cannot say without referring to the letter-book.

Q. Did any more letters pass between them?

A. Yes, sir.

Q. Do you not know that Judge Hughes did admit Hunton's claim?

A. I do not know positively that he did.

Q. Did you understand so from Judge Hughes?

WITNESS. That he admitted it?

COUNSEL. Yes, sir; you said he had a separate defence.

A. Yes, sir.

Q. What was that?

A. His defence was, the same pleas were put in that were put in by General Denver and M'r Peck. I saw them, and I think they were the same pleas—nil debet or non-assumpsit.

Q. What I want to know is, whether he was going to admit Hunton's claim?

A. If you are going into the subject of the conversation with him, I suppose the very matters——

Q. No; want to know whether he admitted the claim?

A. I do not know that he, specifically, admitted the claim; he admitted to me that his defence was different from the defence of General Denver and M'r Peck, and that he intended asking the court to make the amount that should be decided to be due to M'r Hunton chargeable to General Denver, because he had turned the case over to Arthur.

Q. I do not ask for his admission to you, but whether he admitted that to Hunton or not?

314 A. He never told me that he admitted it to Hunton.

Q. Have you any letters from Judge Hughes to M'r Hunton?

A. I presume I saw most of the letters written by Judge Hughes to M'r Hunton; I have a letter-book, and all that was put on the letter-book, I presume.

Q. You do not recollect of his admitting to Hunton that he had a claim against the firm for the fee?

A. I do not recollect of his admitting to Hunton that.

Q. Or to Hunton's attorneys?

A. No, sir; not in my presence. His communications to them were not in my presence, and I have said Hunton and himself were frequently in conversation together, but I was not present at these interviews.

By M'r Pike:

Q. Please state how long after you entered into partnership with Judge Hughes you remained in the office of Hughes, Denver & Peck as clerk or book-keeper or otherwise in the employ and pay of the firm, and at what salary or rate of compensation.

A. I formed a partnership with Judge Hughes in July, I think; the firm having been dissolved in March, 1869. Judge Hughes' office, at that time, was in Alexander's Building. I attended the firm office, and spent the greater part of my time there, and attended at Judge Hughes' office also. Part of the time I was receiving a salary of $1,800, and part of the time $2,000, and subsequently, when I gave up everything except the books of the firm, I received a salary of $1,000. When I received a salary of $1,000 it was understood that I was to attend to nothing except the accounts of the firm.

Q. At what time was that, when the salary became $1,000?

A. I think it was in 1870.

Q. What time in 1870?

A. I do not remember.

Q. Spring, summer, fall, or winter?

315 A. I think it was in the summer of 1870; that is my recollection. I could not tell without referring to the books; the books will show in regard to that.

Q. Up to the time, or about the time that the change in the salary was made, was it made known by you to M'r Peck or M'r Denver you had formed a partnership with Judge Hughes?

A. It was not to General Denver. I do not know whether I mentioned it to M'r Peck or not; I think I did; but cannot state positively. But at all events I attended to all my specific duties connected with the firm, and rendered a great deal of service in cases of which Judge Hughes had charge—firm cases.

Q. By the terms of the partnership so formed, did you become interested as partner with said Hughes, in his interest, or business of Hughes, Denver & Peck generally?

A. I did not.

Q. Or any part of it?

A. I did not.

Q. Or in any particular case or claim in the hands of the firm?

A. No particular case or claim in the hands of the firm, until the day of his death. In consequence of the services I had rendered in the Warren Mitchell case, in the codicil of his will he left me one-fourth of his share of the fees, but there was no understanding between us previously with regard to that case.

Q. Did you and M'r Middleton, as partners of Judge Hughes, become interested with Judge Hughes in his share of the business, in the firm of Hughes, Denver & Peck?

A. I did not.

Q. Never became interested in the case of Lamar, and in the fees?

A. No, sir.

Q. Never had any interest?

A. No, sir.

316 Q. Please explain the reason that that draft of a motion, which Judge Hughes had drawn up by Mr. Peck, and which he interlined and changed, why was that put on the diary of Hughes, Middleton & Roane?

A. It was never put upon the diary of the firm—that draft.

Q. It was the memorandum that he made. Was that memorandum made on the diary of the firm?

A. The memorandum as to his interest in the case?

COUNSEL. Yes, that he retained his interest in the fee.

A. Simply, when he commenced business Judge Hughes suggested that we should keep a business diary, and it fell into my hands to keep

that diary. I recorded in it not only our own business—that is, the business pertaining to the firm of James Hughes & Co., of which M'r Middleton and myself were members—but also occasionally, but not systematically, Judge Hughes' interest in the business of Hughes, Denver & Peck, simply as a memorandum for him.

Q. Not because the firm had any interest in it?

A. No, sir; we had no interest. We had an interest with General Roberts in the "Nutt" case as a part of his fee. It was not in the fee of Hughes, Denver & Peck.

Q. Your only interest is as executor?

A. Yes, sir; and as a legatee in the Warren Mitchell case, in consequence of services I had rendered. It may be well for me to state that I was partner of Judge Hughes until '71—from '69 to '71—when we formed a new partnership, when M'r Middleton was admitted; and I will state here that my interest in Judge Hughes' business was one-quarter, Judge Hughes receiving three-quarters and I receiving one-quarter. That did not include any part of the business of Hughes, Denver & Peck. After we formed the firm of James Hughes & Co. we were equal partners, each receiving a third—M'r Middleton, Judge Hughes, and myself.

Q. Did you make any notes of the conversation you had with
317 M'r Peck at the time you spoke of, in regard to reasons?

A. No, sir; I did not.

Q. It is your memory alone?

A. Yes, sir; I had frequent conversations with M'r Peck; walked with him very often. I visited him very often. He visited my house, and both I and my family visited his house; we were very intimate.

Q. Did not you give your consent that one-half of the fee in the Haskins case should be paid to W. G. M. Davis?

A. No, sir; I did not. I stated to General Davis that I knew he had performed services in the case, that Judge Hughes had recognized the services, but that I did not know to what extent he was to share in the fee; and I wrote a letter addressed to General Denver and M'r Peck quite recently, in which I stated that I would consent to the payment to W. G. M. Davis a portion of the fee, not exceeding one-half.

Q. What were the services rendered by General Davis in that case?

A. I only know from hearing him conversing with Judge Hughes on the subject, and from seeing papers that he had drawn up in the case while it was before the commission in the War Department.

Q. Did he render any afterwards?

A. Not that I know of.

Q. What were the services rendered by Arthur Denver in the case?

A. I do not know, except that I have frequently been in Arthur Denver's office, and seen him at work upon the case. I do not know what, specific.

Q. Had you any arrangement or understanding of any sort with W. M. G. Davis in relation to a fee due from Haskins, or any part of it?

A. None whatever.

Q. Nor the estate of Judge Hughes?

318 A. No, sir; neither the estate of Judge Hughes nor myself.

Q. No arrangement, neither for yourself or the estate?

A. No, sir.

Q. That Davis is to pay any part of it over to you?

A. No, sir.

By M'r Peck:

Q. On the books of Hughes, Denver and Peck there is the case of

Madame Bertinati. I was informed recently that that claim had been allowed. Did Judge Hughes receive any fee in that case?

A. No, sir, not to my knowledge, and I frequently conversed with him on the subject. He always said to me that he had received nothing, and was to receive nothing.

Q. How did the firm get out of that case, if they ever did get out of it?

A. I do not know personally. I understood from Judge Hughes that he had obtained your and General Denver's consent to turn it over to General Roberts—he was a particular and special friend of Madame Bertinati; and, as he stated to me, he thought General Roberts was more likely to gain the case, and requested that it should be turned over to him.

Q. Was the case allowed in Judge Hughes' lifetime or after his death?

A. I think it was allowed in his lifetime, but some objection was made in Congress, I think. I am not certain about that, however, whether that was before or since his death. Some objection was made in Congress, and it had to go back again, according to my recollection.

Q. Did Judge Hughes, or his representative, receive any part of the Roberts fee?

A. No, sir; none whatever, so far as I know, either from him or any other person whatever.

319 By M'r Pike:

Q. It was since his death?

A. I think it was allowed before. It was not collected, because there was some objection made in Congress. They raised a new point there, I believe, that she or her agents had sold cotton to the Confederate Government.

Q. Do you know what the fee was in that case?

A. I do not.

A. ROANE.

Sworn and subscribed to before me this 28th day of November, A. D. 1874.

JAMES O. CLEPHANE,
*Examiner.*

OFFICE OF JAMES HUGHES & CO.,
458 LOUISIANA AVENUE,
*Washington, D. C., December* 10, 1874.

J. O. CLEPHANE, esq.,
*Washington, D. C.*

MY DEAR SIR: I enclose you a copy of a letter from Thomas Hunton to Judge Hughes, which I have to request that you will append and file as an exhibit to my testimony recently taken before you. I have seen Gen. Pike, and he consents that it shall be filed, but perhaps you had better see him yourself. I intended when I gave my testimony to have filed the letter, but forgot to do so.

Yours, truly,

A. ROANE.

NEW ORLEANS, *October* 22, 1872.

JUDGE HUGHES:

MY DEAR SIR: Upon the recommendation of a friend I caused to be placed in the hands of Hughes, Denver & Peck the claim of Edward Laplante v. The United States. The claim had been placed in my

320 hands, as attorney, for collection. Your friend, Gen. Taylor, thought you a most reliable man, and M'r Chadwick, of the Willard House, highly recommended your firm. I left the claim with Chadwick to hand over to you, which he did. You corresponded with me on the subject. Last January the amount, exceeding $112,000, was paid over to Hughes, D. & P.

H., D. & P.'s agreement with Mr. C., as he informed me, was, that you were to retain 25 per cent. of the amount, of which we were to have one-half, or 12½ of the whole. H., D. & P. retained out of the amount collected above $17,000 exceeding the stipulated fee. They paid over the whole balance to Mr. L. without notifying me of the collection, and I have not received a cent.

I had a most unsatisfactory interview with Gen. D. on this subject.

I beg you to inform me if whether you will allow the matter to remain thus, and I hope you will favor me with an early answer.

Very respectfully, your obedient servant,

(Signed) THOS. HUNTON.

(Envelope marked thus:) Stamp. Postmarked "New Orleans, La., Oct. 23." Addressed "Judge Hughes, late of Hughes, Denver & Peck, Washington City, D. C."

(Enclosed on back in Hughes' handwriting:) Thos. Hunton, New Orleans, Oct. 22, 1872. About Laplante case. Rec'd Oct. 28, 1872—ans'd same day.

A. ROANE, EXECUTOR OF JUDGE HUGHES, *v.* DENVER & PECK. } Equity. No.

WASHINGTON, D. C., *December 11th*, 1874.

321 In compliance with request contained in foregoing letter, and by consent of parties as indicated in the letter referred to, I herewith submit copy of letter of Thomas Hunton to Judge Hughes, dated New Orleans, Oct. 22, 1872, the same to be regarded as part of the deposition of A. Roane, filed by me in the above entitled cause.

JAS. O. CLEPHANE,
*Examiner in Chancery.*

*Deposition of Dr. Charles A. Wells, for plaintiff.*

CHARLES A. WELLS, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by Mr. Bradley:

Q. Where do you reside?

A. Bladensburg, Prince George's County, Maryland.

Q. What is your profession?

A. Practising physician.

Q. Did you know the late Judge Hughes?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. I judge it must have been in 1870, or 1871; more intimately acquainted with him in 1871. I knew him in 1870, however.

Q. Did you attend him as physician?

A. Yes, sir.

Q. At what time in the beginning?

A. Possibly I attended him a little time in 1871. I attended him in 1872 and 1873, and up to the time of his death.

Q. Beginning some time in 1872?

322 A. I judge I may have attended him for little trifling ailments in 1871, the first season that he came out there, but frequently in 1872, and almost constantly in 1873.

Q. What was the trouble in 1872?

A. In 1872 he had a little trouble with his kidneys. He seemed to be unable to attend to business. He was complaining very generally. He had, for one thing, a little paralysis of the right eye-lid in 1872.

Q. Do you recollect what advice you gave him?

A. Yes, sir; I recollect that, in 1872, I particularly desired he should abstain particularly from business, and advised him to go away. I think he was speaking at one time of going to the sea-shore, but I advised him to go to an interior place; to go to some watering place in Virginia, if he proposed to go to a watering place at all, because I thought he really needed rest and quiet from the excitement of business, and I advised him to go away, but he would not go. But I think he said that his business would not allow him to go. That was the reason he gave me, and perhaps the only reason.

Q. Had the spring season then commenced?

A. I think that was late in 1872 I advised him to go away. I attended him a great deal in July and August, 1872; or perhaps August and September, 1872. At that time I advised him to go away. I only saw him a few times early in 1872. It was during the very hot weather of 1872 that he seemed to be quite sick and unable to attend to business.

Q. At what time did he die?

A. He died the 21st of October, 1873, I think.

Q. What effect would his condition have upon his capacity for mental labor, as well as bodily exertion?

WITNESS. When?

COUNSEL. The summer of 1872.

A. He constantly declared his inability to do business in 1872. He told me that he could not write. I recollect of going into his

323 house and his telling me that he had that morning attempted to write and he nearly fell. He frequently spoke to me about a cloud of correspondence accumulating upon his table, and his inability to attend to it at all. He was not a man who was willing to subject himself to medical treatment. He made light, as far as he possibly could, of his ailments. I would be attending him, and go in the next morning and find he had come over here to town when he ought to have been in bed.

Q. Following down now from the fall of 1872 and the winter of 1873 to his death, just state, if you please, the progress of his disease.

A. During the winter of 1872 and 1873, the early part, he grew a great deal better. After cold weather came on he seemed to rally. He seemed to get a great deal better, and I did not see him a great deal in the winter of 1872, that is, mid-winter, except as a friend. I did not see him again until the spring or the early summer of 1873. I attended him sometimes during the spring of 1873. But early in the summer of 1873, the last of May or the first of June, I attended him from that time daily almost to his death. At that time there developed in the early part of 1872 a cardiac disease, of which he died—we think aneurism of the aorta.

Q. What effect would the progress of that disease have on his temper and disposition?

A. I was, perhaps, not sufficiently acquainted with Judge Hughes to say. Upon most men it would exercise rather a depressing influence. It did not upon him. Hughes did not give up very readily; but there was no peculiarity; I did not know Judge Hughes well enough to know much about his temperament previous to his being a diseased man. I did not know him when he was a well man; but he was a very ill man from the early spring of '73 until his death.

Q. Do you attribute his disease to any particular cause; if so, what?

A. His cardiac disease—aneurism—I have no reason to know what caused it; aneurism is usually caused by some weakening of the coats of the artery.

324 Q. From the time you first began to attend him, in the summer of '72, or whenever it was, was the character of his disease such as to have any effect on his disposition and character—irascibility, or anything of that kind?

A. I think Judge Hughes had grown more impatient. I may be able to state that because I was thrown more in contact with him, and saw more of him; that Judge Hughes evinced a great deal of impatience, not necessarily from his disease, perhaps. A man who is suffering with pain from disease, of course, is not likely to be as patient and as pleasant as when he is quite well (and Judge Hughes was something of an invalid, I was going to say, during the whole of '72 and '73), he had a disease which he knew would kill him. He did not think it would kill him quite as quickly as it did, but he knew that he was a doomed man just as soon as the disease made its appearance.

By Mr. Roane:

Q. State whether you think his habits of drinking had anything to do, particularly, in causing his sickness?

A. No; I have no idea that intoxication, or the use of liquors, had anything to do with producing the aneurism. I have no reason to believe that it had at all.

Q. State whether he was in the habit of drinking, so far as you know, more than usual?

A. Yes, sir; more than most men.

Q. More than he himself was in the habit of drinking; whether he changed his own habits in regard to drinking; whether he drank excessively during this time you attended on him, more than he was in the habit of drinking?

A. I do not know; I have no means of knowing what he used to drink before I attended him; I know when I attended him, in 1873, he stopped entirely for a month or two, at my suggestion, hoping that it might possibly have some influence over the circulation, but it did not, and he afterwards drank moderately, at my suggestion. He went back to it again. I think, however, there were six weeks in the summer of 1873 that he had not drank a drop.

325 Cross examination by Mr. Pike:

Q. State whether Judge Hughes knew it was an aneurism, or what he called the disease himself?

A. Judge Hughes, I think, did not know. Yes, I think latterly, that we told him it was an aneurism—perhaps two months before his death.

Q. In the summer of 1873, what did he suppose it to be?

A. In the summer of 1873, first, I heard him say that he believed that it was the pressure upon the brachial plexus of the nerve from an

abscess. He thought, for awhile, that the pain was rheumatism. He was one of those men that prescribe for themselves, and he took his own remedies, or remedies that somebody gave him, and had himself made galvanic plates to wear.

Q. Didn't he call it "angina pectoris?"

A. I think he did.

Q. It was painful, wasn't it?

A. Yes, sir; it was an affection as painful as angina pectoris is sometimes, produced by a pressure upon the brachial plexus upon the nerves.

Q. Didn't he, late in the summer of 1873, eat and drink imprudently?

A. He never ate imprudently, I think. He drank imprudently for a man who was suffering at all.

Q. What did he drink?

A. He drank, by my request, brandy; though he said he didn't like the taste of it, but I thought it would have an astringent effect on the diarrhea.

Q. He drank wine also, didn't he?

A. I have no means of stating whether he drank wine or not; he possibly did; I never saw him drink wine; I directed him to drink brandy. He kept brandy and wine and everything of that kind in his house.

CHARLES A. WELLS, *M. D.*

326 Sworn and subscribed to before me, this 28th day of November A. D. 1874.

JAS. O. CLEPHANE,
*Examiner.*

Adjourned to meet November 30, at the same hour and place.

JAS. O. CLEPHANE,
*Examiner.*

TESTIMONY FOR DEFENDANT.

WASHINGTON, D. C., *November 30th*, 1874.

The commission met pursuant to adjournment. Present, counsel on either side. Adjourned by consent to meet on Wednesday, December 2d, at the same place, at ten o'clock a. m.

JAS. O. CLEPHANE,
*Examiner in Chancery*

WASHINGTON, D. C., *December 2d*, 1874.

The commission met pursuant to adjournment. Present, counsel on either side. The examination of witnesses proceeded as follows:

CHARLES F. PECK, recalled for defendant:

By M'r Pike:

Q. You have heard M'r Roane's testimony and you will please state anything you wish to say about it.

A. I have heard and read M'r Roane's testimony, given at the last hearing, and it does refresh my memory with regard to some points. I will say, first, that M'r Roane is entirely mistaken in stating that I drew up a letter to Judge Hughes and gave it to him. My recollection is quite distinct that I did nothing of the kind. Judge Hughes would have been very careful to have preserved any such letter if he had it
327 and I think it could be produced. I am quite positive that there

was no such letter written. M'r Roane, again, is mistaken in saying that I explained to him the cause of the dissolution, or that I said anything prejudicial to either Judge Hughes of General Denver. My recollection is that I was particularly scrupulous to say nothing which could in any way impair the present relations between my former partners and myself, and that I stated so to M'r Roane, that whatever had occurred that dissatisfied me, I would say nothing or do nothing that could give any offense. It being my intention, if it lay within my power, to have the dissolution and the settlement of the business amicably arranged. My object in speaking to M'r Roane, instead of addressing myself directly to Judge Hughes and General Denver, was that I knew Judge Hughes to be a passionate man, and I apprehended that if I broached the subject to him directly it would result in hard feelings and possibly a quarrel. That I knew M'r Roane, and we were very intimate friends, and what I desired M'r Roane to do, and hoped he would do, would be to broach the subject indirectly, in such a way as would save his feelings and avoid giving him any offense; not that I thought he had a right to take offense, but I thought his pride would be hurt if the proposition should come from me, instead of coming from him. I did not apprehend that Judge Hughes would interpose any objection to dissolving the firm, but I thought he would be vexed and possibly angry, that any one than himself should propose it. From the result, I inferred M'r Roane stated the matter to him more bluntly than I had supposed he would, because Judge Hughes immediately—I think the next day—wrote me a note very curt in its terms, simply accepting my proposition. I had not intended to make any direct proposition, but to have the matter suggested to him. These circumstances led me to think, with reasonable positiveness, that I did not use any offensive or unpleasant remarks. It is true that a long time afterwards, under the circumstances I stated in my last examination, I did, confidentially, explain to M'r Roane some of my reasons with, as I believe, the express understanding that they were not to be communicated. I did not propose any new partnership with Judge Hughes, either with or without Gen-
328 eral Denver. Judge Hughes, on the contrary, after the last dissolution, proposed a new partnership to me and strenuously requested my consent to it, but I declined, giving no other reason therefor than that I was unwilling to assume new partnership obligations. I am reasonably certain that I never called General Denver a "Drone," and I have never used any remarks that were disrespectful towards him, either then or at any other time. I certainly had no opinions of that kind, and in an intercourse with General Denver of ten years, I believe I have always spoken of him with courtesy and respect; but I know, beyond any question, that in all matters relating to the dissolution of the firm and closing up of the business, I have persistently and earnestly done everything to avoid controversy, quarrel, or scandal. M'r Roane has testified in regard to an attempt to purchase General Denver's interest by me. My present recollection of that matter is my efforts at one time were to purchase General Denver's interest—both General Denver's interest and Judge Hughes', and I made a proposition to them to that effect, which was not acceded to by either of them. I do not think I ever made any proposition for purchasing General Denver's interest, except that I should also purchase Judge Hughes' interest. That is all, I believe, that I wish to say.

By Mr. PIKE. Q. Do you know how that case of La Plante came into the firm?

WITNESS. By the way, I stated in the last hearing that I would bring

the memorandum of the entry on the book. I will now produce it. The following is a copy of the memorandum:

EDWARD LAPLANTE, OF BORDEAU, FRANCE,
*v.*
THE UNITED STATES.

April, 1867, "from T. Hunton, New Orleans, through H. A. Chadwick, A. St. C. D."

By Mr. PIKE. Q. In whose handwriting is the entry?

329 A. I believe it is in Frank Turk's handwriting, but I am not positive. M'r ROANE. It is partly Turk's and partly Arthur's, and he puthis initials there in his own handwriting.

By M'r PIKE. Q. State what were the circumstances of your making that compromise with Hunton.

A. I made the compromise with Hunton chiefly on my own responsibility, although I obtained the assent of General Denver and the assent of M'r Roane to make the compromise, but I did it on my own judgment. I became satisfied from what I could learn about the case from M'r Roane, from Judge Hughes, and from the attorneys on the other side, and from M'r Chadwick, that Judge Hughes had given away the case; that if we went into the court he would be our principal antagonist, and as he was or had been our partner and had an equal interest in it, it would be very up-hill work defending the case.

M'r ROANE. It was after his death?

WITNESS. Yes, sir.

M'r BRADLEY. Explain what you mean by the term "giving away of the case" by Judge Hughes during his lifetime.

A. I mean he had made such admissions as would probably be fatal to us. We discussed, I know, the propriety of getting the record amended so as to avail ourselves of the statute which would prevent any admission made by Judge Hughes, but I feared we could not do that. It was a suit against the surviving partners only, and we feared we could not exclude Judge Hughes' admission. While the partnership existed, from the best information I could get, Judge Hughes had admitted the claim.

Q. Were you or not at that time aware of the existence of this entry on the books?

330 A. I was aware about that time, because Judge Hughes had told me; I state merely by way of explanation that there was an entry on our books admitting Hunton's interest in the claim, and we could not possibly resist it. I was surprised at that statement, and did examine the entry on the books, and I found Judge Hughes was in error, but it satisfied me of the inclination of Judge Hughes' mind in the matter. He having been satisfied, undoubtedly had made admissions. The entry, it will be observed, does not acknowledge any right or interest whatever in Hunton. I honestly believe we had a complete defense to the claim. If we could be allowed a fair trial, we could probably show that M'r Hunton was, in fact, the agent of the other side; that he could not have reserved any interest possibly.

M'r BRADLEY. Agent of the government?

WITNESS. Agent of Laplante. We were prepared to show that. That would have been a complete bar. His colluding with the attorneys on the other side, to reserve any interest to himself, if he had done so. I never could find any evidence that anybody had ever promised

to pay him any part of the fee. It was denied all around on our side, except on the part of Judge Hughes.

M'r PIKE. He claimed to have rendered services in New Orleans?

A. I was uncertain whether his claim was to be based upon any services he had rendered jointly with us in the case, or whether it was based upon the naked proposition that he had put the case in our hands, and therefore by some custom or usage he was entitled to divide fees with us.

Q. What I mean is that he had rendered no service here.

A. He had rendered no service here, and if any in New Orleans it was very trifling. At the inception of the case some letters had passed.

Q. You do not know of his doing anything more than simply sending the claim?

A. I do not know of his doing anything more than sending one
331 or two letters in reference to it. I do not know that he did send the claim; I never supposed he did although the entry would "squint" that way.

M'r ROANE. The entries on the books show that he took some depositions.

WITNESS. I say the entries "squint" that way.

M'r PIKE. What was the amount of that claim of Madame Bertinatti's?

A. I know nothing about it. A few days ago a gentleman called my attention to the fact that the claim had been allowed, and told me a large fee had been paid, and he thought it had been paid to Judge Hughes and Gen. Roberts jointly, but he did not appear to know much about it. I asked M'r Roane so that I might get information on the subject, but I have none myself.

Q. Did you know the claim had been put in M'r Robert's hands?

A. I did not know it; at least, if I did, I had forgotten it.

Q. Did you have anything to do with putting the claim in M'r Robert's hands?

A. I had nothing to do with it. M'r Roane states that Judge Hughes says I consented. I do not deny that I did. I do not remember. I do not controvert that proposition on my part. I know there were one or two matters of that kind I was asked to consent to, and I did consent. The Bertinatti matter may have been one. I do not deny that it was.

Q. You do not know the amount of the "Bertinatti" matter?

A. No, sir; that can be ascertained from the books. I will state that M'r Fant was the gentleman who told me. He told me that he thought Judge Hughes and M'r Roberts together had received a large fee in the case.

M'r ROANE. I do not think Judge Hughes did receive anything, but Gen. Roberts can testify as to that. Of course I do not know positively, but I was acquainted with all of Judge Hughes' financial matters, and I never heard of such a thing.

332 M'r PECK. I do not care about following the matter up further.

C. F. PECK.

Sworn and subscribed to before me this 2d day of December, A. D. 1874.

JA'S O. CLEPHANE,
*Examiner.*

A. ROANE, recalled for plaintiff.

I will state that this proposition to buy out Judge Hughes was made long subsequent to the proposition to buy out Gen. Denver. It was after M'r Peck returned from Europe that he made the proposition to

buy out Judge Hughes. I have a copy of the letter I wrote to M'r Peck on the subject. I submitted the matter the Judge Hughes, and I wrote to M'r Peck that Judge Hughes very positively declined it. I suppose he remembers that. This proposition to purchase out Gen. Denver, was long previous; but I would further state that it is possible that I may be mistaken as to whether a letter was written by Judge Hughes to M'r Peck. I certainly have not come across it among his papers. It is true I have not made a very thorough and minute examination of his papers. There are several trunks of them now in the custody of his wife.

M'r PECK. I have testified that there was a letter written by Judge Hughes to me.

WITNESS. The letter you wrote to Judge Hughes about the dissolution I am speaking of. It may be I have confounded a letter M'r Barnitz brought to me at my house from Judge Hughes, soon after I had communicated to Judge Hughes M'r Peck's proposition for a dissolution. With regard to confidential communications between M'r Peck and myself, I will say that there was no special injunction of confidence or secrecy that I know of, but still I regarded all of the matters that passed between us as private, and I never mentioned these things before I testified here on the stand the other day, and would not then
333 have mentioned them except that I thought that my duty as executor required that I should state these facts. M'r Peck had testified very promptly in respect to Judge Hughes' inattention and neglect of business. He is a dead man, not present to confront him. M'r Peck would naturally be reluctant to testify as to what he had said of Gen. Denver, who is a living man, and with whom he is thrown into daily association. I say, however, that these conversations that I speak of were not, or rather these reasons that he gave me for the dissolution, were not all mentioned at the same conversation, but in frequent conversations. It was not once that I conversed with him on the subject, but many times. We discussed the affairs of the firm frequently—I may say hundreds of times—and reiterate what I said, that M'r Peck did complain of Gen. Denver on account of inefficiency or non-attention to the business of the firm very frequently; but he never expressed, as he states, any personal hostility to Gen. Denver, but, on the contrary, as I said before, he always expressed a kindly regard for him. These declarations that he made with regard to Gen. Denver's inefficiency were not personal to him as a man or a gentleman, but simply to him as a partner. I therefore reiterate and reaffirm, in the most positive and distinct terms, that M'r Peck many times complained to me of Gen. Denver's inefficiency and want of attention to business; and I am very positive that he used the word "drone," as applicable to him, not in a personal sense, but only in a business sense. I will be glad if Gen. Pike will cross-examine me very closely upon all these matters. There are a great many things that probably might be brought to my mind, that do not occur to me just at this moment, and in regard to the settlement with Arthur Denver, M'r Peck drew up that contract himself, putting into it a provision.

Mr. PIKE. It is not worth while to testify as to the contract.

WITNESS. I would rather do it. He put into it a provision that Arthur Denver was to attend to any business that he might be required to, without compensation.

334 M'r PIKE. It is not worth while to testify to that, because I object to putting down the contents of the papers that are on the record.

WITNESS. It is not the contents of the whole paper. I want to connect it in a certain way. I want to show that Arthur Denver is not entitled, except by grace, to any fee in the Haskin's case.

M'r PIKE. That will appear.

WITNESS. No; it will not appear unless I state it in this way. He is entitled to compensation for his labor, but only entitled to it as a matter of grace.

M'r PIKE. All that is in the record.

WITNESS. I do not know. The mere presenting of the papers does not show.

M'r PIKE. I object to any testimony as to the contents of any paper or testimony which is merely in the nature of argument.

M'r ROANE. The reason that I want to testify to this is I want to show if he is entitled by contract to any compensation in the Haskin's case.

M'r PIKE. The contract will show for itself. I object to it on another ground, that M'r Roane had closed his testimony, and that we had come here to present our testimony, and we object to his going on with a long statement about the Haskin's case, which has nothing to do with this case.

A. ROANE.

Sworn and subscribed to before me this 2d day of December, A. D. 1874.

J. O. CLEPHANE,
*Examiner.*

Gen. J. W. DENVER recalled for defendant.

Examined by M'r Pike:

Q. State the mode in which the La Plante case came into the office; explain what was testified to by M'r Roane in regard to the fact
335 that it was supposed to have come through M'r Turk, and afterwards you found out that the papers were handed to you by M'r Chadwick?

A. M'r Chadwick handed me some papers which he said related to a claim against the United States. I supposed that that was the first of it. I took them up to the office. The office was then on G street. I do not remember now who I handed them to, but I think it was Col. Williams; I am not sure about that. Turk afterwards explained to me that it was a case that he had got, and the papers were intended for him. This last I did not know of until a long time afterwards, but I did know that Turk and Denver claimed the case as theirs, and the entry upon the books after M'r Turk had called my attention to it. I found it to be in Turk's handwriting. It was always treated as a case belonging to Turk and & Denver, included as theirs in all our settlements.

Q. Turk claimed to have had the case before the papers were handed to you?

A. Yes, sir.

Q. I think the only other question that I want to ask you is with reference to the "Bertinatti" case—what do you know about that?

A. I only know that we had such a case, and there was a great deal of work done in it, and it went out of our possession. We never got anything for it. M'r Roane says that Judge Hughes said he had got my consent. I have no recollection of it. It may have been so.

Q. You do not know the amount?

A. No, sir; I have been looking over the statutes. It was allowed

by the Southern Claims Commission, and it ought to appear in the appropriation, but I do not find it.

WITNESS. In reference to the statements made by M'r Roane as to remarks alleged to have been made by M'r Peck, in a confidential conversation about myself, I wish to say that the relations between M'r Peck and myself have never, in the course of nearly ten years, been
336 disturbed in the slightest degree, except once, and that was by the misrepresentation of a third party, which was all afterwards fully explained as soon as we could get together and talk the matter over. The statement of M'r Roane is so entirely different from all relations that have ever existed between M'r Peck and myself, and as it seems to have been brought in here for no purpose connected with this suit, but for the sole purpose of creating ill-feeling between M'r Peck and myself, I feel it my duty to say that I do not believe one word of it.

Mr. PIKE. There was some inquiry made as to the law arguments you had filed in reference to the business of the firm, or whether you had ever filed any.

Mr. BRADLEY. Yes; whether he had ever prepared any briefs on law questions.

WITNESS. I have prepared all the briefs necessary, whether it referred to facts or to law questions, that were necessary to win all the cases that we had in the Court of Claims. I think nearly all of them. I do not remember of losing but two cases that I attended to in the Court of Claims.

Q. How many did you attend to?

A. Well, it is in evidence here; somewhere in the neighborhood of ninety. As to the questions of law that might have been raised, I will mention one very important one that was raised by me, and which I did attend to exclusively, without the assistance of anybody, and that was the Villa Longo case, which involved the question of factor's lien—whether the factor could recover in the Court of Claims for the cotton that was taken from their possession.

Q. Claiming a lien on it?

A. Yes, sir.

Mr. ROANE. State when that was.

A. The cases are now pending in the Supreme Court.

Q. But when you attended to them in the Court of Claims from the time Mr. Peck left here?

Mr. ROANE. That was when Judge Hughes was sick.

WITNESS. Judge Hughes was not sick at that time.

337 Mr. ROANE. State the year and we will see.

Mr. PIKE. I suppose there will be no objection to my stating here that I find from that statute that the allowance in relation to Madam Bertinatti was $11,860; that was appropriated at the first session of the Forty-third Congress.

J. W. DENVER.

Sworn and subscribed to before me this 2d day of December, 1874.

JAS. O. CLEPHANE,
*Examiner.*

A. ROANE recalled for plaintiff.

I wish simply to state, in reply to Gen. Denver, that this matter of the conversations between Mr. Peck and myself was introduced, not for any purpose of creating ill-feeling between Mr. Peck and Gen. Denver, but because the other side had put in testimony with regard to

neglect of business and inefficiency of Judge Hughes; and, as the record stood, it appeared he was the only man who had been inefficient or neglectful. I gave that testimony to show that Mr. Peck, up to the time of his sickness, thought that Gen. Denver had also been inefficient and neglectful. That was the purpose of it. With regard to whether Gen. Denver believes my statement or not, it is a matter of no consequence to me, one way or the other. It does not disturb my equanimity in the slightest degree. His disbelief is because of the relations personal between him and myself. It is a question of personal relations entirely.

A. ROANE.

Sworn and subscribed before me this 2d day of December, 1874.

JAS. O. CLEPHANE,
*Examiner.*

338, 339 CASE OF A. ROANE, EXECUTOR OF James Hughes, *vs.* DENVER & PIKE.

General ALBERT PIKE, recalled for defendant.

In the winter of 1868, 1869, Judge James Hughes being about to go to Indiana, to sit in the legislature of that State, put in my hands a brief cross-bill that he had prepared in the case of Texas v. White and Chiles, in the Supreme Court of the United States, and requested me to file it for him by a certain day, saying that the court had consented that it might be filed, and that I would only have to present it and move that it might be filed. I promised to do so, and after he had gone to Indiana I did present it, and to my surprise was informed by the Chief Justice that the court had, when the case was before it at an earlier date, distinctly made it known that a cross-bill could not be filed.

The court was then about to hear the case at a very early day, but at the suggestion, I think, of the counsel for the State of Texas time was given to prepare and file a brief in the case. I did not like the position in which Judge Hughes had placed me, and did not, I think, write to him on the subject at all; nor did I know that Mess'rs Denver and Peck were also counsel in the case, and so I never spoke to either of them about it.

But M'r Chiles urged me to prepare a brief for Judge Hughes, and as I felt an interest in the questions involved, and did not like to refuse to do a kindness to a brother of the bar, and as Chiles was in great distress and trouble, I consented to prepare an argument, and did so.

There has never been any questions of more importance or greater interest before that court since its organization; and I took great pains in preparing an argument of ninety-six printed pages, which was printed at the expense of Chiles, upon which the case was submitted, heard, and decided before Judge Hughes returned. I signed my own name, my partner's name, and that of Judge Hughes to it, and I did it without fee or compensation, that the case might not go unargued, and for Judge Hughes as an act of professional brotherhood and kindness.

ALBERT PIKE.

Sworn and subscribed to before me this day of December, A. D. 1874.

JAMES O. CLEPHANE,
*Examiner.*

340 *Decree in gen. term.—March* 13, 1875.

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, deceased, *vs.* J. W. DENVER & C. F. PECK. } Equity 3706. Docket 13.

This cause at a former day of this term came on for hearing on the bill, answers, exhibits, and testimony, and was argued by counsel. In consideration whereof the court finds the equity of the cause to be with the complainant, and that the complainant, as executor of James Hughes, deceased, is entitled to recover from the defendants, as the surviving members of the late firm of Hughes, Denver & Peck, the full and equal third part of all moneys which have come, or may hereafter come, into their hands since the death of said Hughes, as fees in all cases "nearly finished" at the time of the death of said Hughes (October 21st, 1873), and that he is entitled as such executor to the one equal fourth part of all moneys received by the defendants, and which may hereafter be received by them, "in all other cases" belonging to the said late firm of Hughes, Denver & Pike, in pursuance of the contract entered into by the members of said firm bearing date August 13th and accepted by said Denver August 18th, 1869, which contract the court adjudges and decrees to be a good and valid contract, binding upon all the members of said late firm.

And the court does further find and decree that the complainant, as such executor, is entitled to recover from the said defendants the full share of said Hughes in the fee received by the said defendants in the case of G. B. Lamar, including the Martin case, being the one-third or the one-fourth of said fee, as it may hereafter be found to fall within the class of cases "nearly finished" at the death of said Hughes or to the class of "other cases," and that the defendants pay the costs of this suit.

It is ordered that this cause be remanded to this court, sitting in special term, to carry this decree in execution and to make such other orders and decrees as may be necessary in subordination to this decree.

By the court.

A. W.

341 *Reference to auditor.—Filed March* 16, 1875.

In the supreme court of the District of Columbia, sitting in special term, March, 1875.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, *vs.* JAMES W. DENVER & CHARLES F. PECK. } Equity. No. 3706.

It is this 16th day of March, 1875, ordered that this cause be referred to the auditor to ascertain—

1st. What cases belonging to the late firm of Hughes, Denver & Peck were "nearly finished" at the time of the death of said Hughes, to wit, the 21st day of Oct., 1873.

2d. What cases "nearly finished" at said date have been disposed of since the death of said Hughes.

3d. What "other cases" the said late firm of Hughes, Denver & Peck had, at the date of the death of said Hughes, for prosecution.

4th. What, if any, of the "other cases" have been finally disposed of since the death of said Hughes.

5th. What fees have been received by the defendants in cases "nearly finished" at the death of said Hughes, and not heretofore settled between the parties to this suit, and what fees have been received, if any, in "other cases," since the death of said Hughes.

6th. What allowance the defendants are entitled to on account of expenses actually incurred, and not heretofore made, in the prosecution of and on account of the business of Hughes, Denver & Peck, since the death of said Hughes.

7th. And what aggregate amount is now due upon the foregoing instructions from the defendants to the complainant, as executor of James Hughes, deceased.

And that the auditor make report to this court so soon as he can conveniently comply with the directions of this order.

By the court.

A. W.

*Order referring to E. C. Ingersoll, special auditor, to complete account.—M. 9, p. 170.*

Supreme court of District of Columbia.

ROANE, EX'R, *vs.* DENVER & PECK. } In equity. No. 3706. Docket 13.

The death of the auditor of this court having been announced to this court, it is, on motion of the complainant's counsel this 22d day of April, 1875, ordered, that reference heretofore made be and the same is hereby transferred to E'd C. Ingersoll, who is hereby appointed special auditor and directed to complete the audit of the said cause in the manner prescribed by the order of reference of 16th March, 1875, and to report the same to this court.

By the court.

A. W.

342 Supreme court of the District of Columbia.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, deceased, *vs.* JAMES W. DENVER ET AL. } In equity. No. 3706. Docket 13.

Depositions of witnesses produced, sworn, and examined in the above-entitled cause before the auditor of said court on the 2d day of April, 1875, under an order of reference passed March 16th, 1875.

Present, Sam'l S. Henkle, esq., solicitor for complainant, and Albert Pike, esq., solicitor for defendants.

ARCHIBALD ROANE, being duly sworn, deposes and says as follows:

Examined by M'r Henkle:

Q. Will you, M'r Roane, proceed to give the auditor a statement of the condition of the business of the firm of Hughes, Denver & Peck at the death of Judge Hughes?

(Witness here hands paper to the auditor).

340 *Decree in gen. term.—March* 13, 1875.

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, deceased, *vs.* J. W. DENVER & C. F. PECK. } Equity 3706. Docket 13.

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And the court does further find and decree that the complainant, as such executor, is entitled to recover from the said defendants the full share of said Hughes in the fee received by the said defendants in the case of G. B. Lamar, including the Martin case, being the one-third or the one-fourth of said fee, as it may hereafter be found to fall within the class of cases "nearly finished" at the death of said Hughes or to the class of "other cases," and that the defendants pay the costs of this suit.

It is ordered that this cause be remanded to this court, sitting in special term, to carry this decree in execution and to make such other orders and decrees as may be necessary in subordination to this decree.

By the court.

A. W.

341 *Reference to auditor.—Filed March* 16, 1875.

In the supreme court of the District of Columbia, sitting in special term, March, 1875.

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3d. What "other cases" the said late firm of Hughes, Denver & Peck had, at the date of the death of said Hughes, for prosecution.

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6th. What allowance the defendants are entitled to on account of expenses actually incurred, and not heretofore made, in the prosecution of and on account of the business of Hughes, Denver & Peck, since the death of said Hughes.

7th. And what aggregate amount is now due upon the foregoing instructions from the defendants to the complainant, as executor of James Hughes, deceased.

And that the auditor make report to this court so soon as he can conveniently comply with the directions of this order.

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A. W.

342 Supreme court of the District of Columbia.

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Depositions of witnesses produced, sworn, and examined in the above-entitled cause before the auditor of said court on the 2d day of April, 1875, under an order of reference passed March 16th, 1875.

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ARCHIBALD ROANE, being duly sworn, deposes and says as follows:

Examined by M'r Henkle:

Q. Will you, M'r Roane, proceed to give the auditor a statement of the condition of the business of the firm of Hughes, Denver & Peck at the death of Judge Hughes?

(Witness here hands paper to the auditor).

AUDITOR. What paper is this?

A. That contains answer to each head of the order of reference of the court referring the matter to you.

(Paper is here filed, and marked Ex. A. R., No. 1. Counsel for complainant also offers paper marked Ex. A. R., No. 2).

343 M'r HENKLE. State what cases were nearly finished at the death of Judge Hughes?

A. There were ten of class first, I will read them:

1st. W'm Battersby.
2d. Battersby & Cohen.
3d. Battersby & Low.
4th. Charles Green.
5th. Marshall Beach & Co.
6th. A. P. Wetter, trustee.
7th. Charles Hill.
8th. C. W. W. Heinsis.
9th. E. S. Lathrop.
10th. Charles Wilson et al.

The judgments in these cases were obtained in April, May, and June, 1873.

Q. Where was the judgment?

A. In the Court of Claims. I refer to Exhibit A, J. W. D., p. 10, book 2. And they were appealed to the Supreme Court of the United States, and appeals were withdrawn by the Attorney-General Nov. 14, 1873, a few weeks after Judge Hughes' death, Oct. 21st. I refer to certificate of clerk of Court of Claims, Exhibit A. R., No. 2.

11th. S. G. Cabell; judgment was rendered March 13, 1873; appealed June 24, 1873. For proof of that I refer to Ex. A. R., 2. The appeal is still pending in the Supreme Court.

12th. The Home Insurance Company of Savannah, Georgia, and

13th. The Southern Insurance Company of Savannah, Georgia. Judgment rendered June 2, 1873, appealed August 30, 1873. I refer to Ex. A. R., 2.

14th. John L. Villalonga. Judgment June 2, 1873; appealed August 30, 1873.

In the cases—the Home Insurance and the Southern Insurance Companies—which were appealed to the Supreme Court, the judgments have been recently affirmed. With regard to the Villalonga case I
344 will state that the judgment of the Court of Claims was favorable to the claimant and appealed to the Supreme Court, and the Supreme Court partially reversed the judgment and remanded it to the Court of Claims to reform the judgment, and instructing the court to find a judgment for the quantity of cotton that was owned by Villalonga himself, and exclude the amount for which judgment was given to him as factor. The instructions were to be carried out by the court below. The judgment was for about $90,000 and the Supreme Court directed about $53,000 to be deducted.

15th. Case of Warren Mitchell. This was rejected by the Court of Claims March, 1874, and was appealed to the Supreme Court March 30, 1874, but it has been recently rejected by the Supreme Court. The case is dead, but still it was nearly finished at the time of the death of Judge Hughes.

16th. The case of Mary B. Habersham. Judgment was rendered April 13, 1874, in the Court of Claims; appealed July 11, 1874.

17th. The case of Alexander Collie. Judgment May 15, 1874; appealed June 30, 1874.

These cases—Habersham and Collie—are on appeal in the Supreme Court. Reference page 5, book 2.

18th. Battersby and Metcalf, ex'r. Judgment May 26, 1873; appealed August 23, 1873; appealed dismissed April 8, 1874. I refer to certificate of the Court of Claims, book 2, p. 8. In this case the money has been collected by Gen. Denver and Peck. Collected in April last.

19th. A. L. Tyler; judgment May 19, 1873; appealed Aug. 16, 1873; appeal dismissed April 17, 1874. I refer to p. 8, book 2. Money collected in April last.

20th. John L. Hardee, ex'r; judgment March 31, 1873; motion for a new trial overruled April 22, 1874. I refer to p. 8, book 2. Collected in April last.

21st. G. B. Lamar; judgment June 2, 1873; appealed August 30, 1873; appeal dismiss April 6, 1874. I refer to page 30 in Book of Evidence in Lamar case; collected in April last.

345 22d. D. A. Martin. This is included in the judgment in the Lamar case. Refer to evidence in the Lamar case, p. 39. In those cases in which the appeals were dismissed, the fees have been collected by Gen. Denver and Peck.

23d. John Haskins. Award of the British & American Commission, Jan. 13, 1873. I refer to page 47, book 2. I will state with regard to the Haskins case, that I believe all the awards, although actually made at different times, were dated on September 24, 1873, although the case was finished in January.

Those are all the cases under the first head of the order of the court, "nearly finished."

Q. Does that cover all the cases that you know of?

A. That's all I know.

Q. Do you know about their having any department business?

A. I know there was considerable amount of department business, but I am not able to state the condition of any of the department cases.

Mr. BRADLEY. What was done in those cases after Judge Hughes' death?

A. In the first ten cases I mentioned nothing was done, so far as I know, except making a formal application to the Attorney-General for the withdrawal of the appeals. When an appeal is withdrawn, the case does not go to the Supreme Court; and when an appeal is dismissed, it is after the record goes to the Supreme Court. Appeals were taken in these cases and were withdrawn before the records were sent up by the Attorney-General. I speak from information and belief. The service of having those appeals withdrawn was done through the influence of agents employed by Duncan, Sherman & Co., who were largely interested in the cases.

Mr. PIKE. Do you know how they got them dismissed?

A. No, sir, I don't, except what has been told me by other persons—that it was through the influence of Duncan, Sherman & Co.

346 Mr. HENKLE. Those judgments were rendered in the life-time of Judge Hughes?

A. Yes, sir. And the appeals withdrawn a few weeks after his death; in those ten cases the appeal was withdrawn Nov. 14, 1873.

The next case is S. G. Cabell—

Mr. PIKE. You don't know what has been done one way or another?

WITNESS. I don't know what has been done. I had conversation with Mr. Cabell upon the subject.

In the Home insurance case and the Southern insurance case, there was a judgment of the Supreme Court affirming the judgment of the

Court of Claims. I only know that from the newspapers, and from inquiry at the clerk's office of the Supreme Court.

Mr. HENKLE. Do you know what was done after Judge Hughes' death?

A. I have no personal knowledge as to anything being done after Judge Hughes' death.

Q. Under the second head of the reference, what cases nearly finished have been disposed of since the death of Judge Hughes?

A. The same ten cases referred to under first head, and the following:

11th. Battersby & Metcalf, ex'r.
12th. A. L. Tyler.
13th. G. B. Lamar.
14th. D. A. Martin.
15th. John L. Hardee, ex'r.
16th John Haskins.
17th. Warren Mitchell.
18th. Home Insurance Company
19th. Southern Insurance Company.
20th J. L. Villalonga.

Q. Which of the cases nearly finished have been disposed of?

A. There are twenty-three cases under the first and twenty under the second head.

347 M'r BRADLEY. Do you know of any department business disposed of since the death of Judge Hughes?

A. There were some department cases on the books of the firm, but I don't know of anything being done.

M'r PIKE. I want to know whether the money has been collected in the Villalonga and the insurance cases?

A. There is a head under which that will come.

M'r HENKLE. What other cases of the firm of Hughes, Denver & Peck were in prosecution at the death of Judge Hughes?

A. 1st. The case of Warren Hall.
2d. Leonidas Haskell.
3d. Whiteside et al.
4th. C. A. Danolds.
5th. Bishop & Wescott.
6th. Comstock & McClellan.

These six cases were rejected in the Court of Claims and appealed to the Supreme Court of the U. S. I refer to Exhibit J. W. D. No. 1 of Denver's answer.

There are about twenty other cases that were pending at the death of Judge Hughes. The case of C. T. Cunningham, Cross & Sons, W'm Dean & Co., W. F. Dickerson, F. S. Lathrop, George Patten, Henry Lafone, John D. Merrilies, Tho's H. Gilles, Nelson McStea, W'm B. Low, Emma P. Jones, Irvine & Clay, Isabella Fluker, W'm F. Smith, S. D. Burton, John Ryon, Walker & Topp, W'm M. Derby et al., Miles Taylor, Leonidas Haskell, A. W. Wolcott, M'r's V. A. Tuttle, Herman Boker & Co., and B. F. Camp.

These cases are now pending in the Court of Claims. I refer to Ex. J. W. D. No. 1, to General Denver's answer, pp. 23, 24.

The next case is—

32. The case of Joseph B. Stewart in the supreme court of the District of Columbia. I refer to Exhibit J. W. D., p. 24.

33. The case of E. M. Dawson.

34. E. M. Guy, and

348 35. E. D. Barden, are pending in the Southern Claims Commission. I refer to Exhibit J. W. D., p. 24.

36. The case of C. A. Perry. This is in Congress. Ex. J. W. D. No. 1. Ev. before Arbitrator, p. 24.

37. The Kentucky Agricultural & Mechanical Association. Ex. A, J. W. D., p. 10, book 2.

38. The Hot Springs of Arkansas. In the Court of Claims. I believe that was decided last Monday adversely. Peck's answer, p. 44; Denver's, p. 46.

39. Claim for refunding cotton tax. That is in Congress. Peck's answer, p. 5; Denver's, p. 26.

40. W. M. McVeigh. I have not much information in regard to that. It was in the Supreme Court, but what has become of it I don't know.

Those are all the cases that come under the three heads. I know there were department cases, but I am unable to give them.

Q. Under the fourth head of reference, what other cases have been finally disposed of since the death of Judge Hughes?

A. 1. The case of Comstock & McClellan, rejected by the Supreme Court, Jan. 11, 1875.

This information I get from clerk's office.

5. Miles Taylor. Judgment was collected by M'r Janin.

There was a judgment of the Court of Claims in this case which has been collected since the death of Judge Hughes, as I understand, but I have not been to the Treasury Department to see that it was collected. M'r Janin was associated with Hughes, Denver & Peck.

3. Kentucky Agricultural and Mechanical Association. Act was approved by Congress in 1874, making appropriation of $25,000 to satisfy that case. I refer to Ex. A, J. W. D.

Those are all the cases that have been finally disposed of since the death of Judge Hughes, that I know of.

Q. Now state what fees have been collected by the defendants
349 in cases nearly finished at the death of Judge Hughes, and what fees have been received in any other case since the death of Judge Hughes.

A. Under the general head of "nearly finished" I have these:

1. Battersby & Metcalf ex'r. The judgment of the Court of Claims was for $487,242.07, on which a fee of 5 per cent. was paid, amounting to $24,362.10. Judgment, May 20, 1873; appealed August 32, 1873; appeal dismissed April 8, 1874. See Peck's ans., p. 8, and Peck's tes., pp. 42, 78, 79.

2d. The case of A. L. Tyler. The judgment of the Court of Claims was for $88,891.31, on which a fee of 5 per cent. was paid, amounting to $4,444.61. Judgment, May 19, 1873; appealed Aug. 16, 1873; appeal dismissed April 17, 1874. (See Peck's ans., p. 8; Denver's ans., p. 29; Peck's testimony, pp. 42, 78, 79. Ex. A. R., p. 8.)

3d. John L. Hardee, ex'r. Judgment of the Court of Claims was for $103,856.56, on which a fee of $22,214.21 was paid. Judgment, March 31st, 1873; certified for payment April 3, 1873. Motion for new trial overruled April 22, 1874. Peck's ans., p. 8; Denver's ans., p. 29; Peck's testimony, pp. 40, 78. Ex. A, A. R., p. 8.

4th. G. B. Lamar. Judgment of Court of Claims was for $579,343.57. Judgment, June 2, 1873; appealed Aug. 30, 1873; appeal dismissed April 6, 1874.

(Evidence in Lamar case, p. 32.)

Fee 10 per cent. on $579,343.57—$44,884 48. (Martin case included in Lamar judgment) = $534,459.09, amounting to $53,445.90. (See Peck's ans., p. 8; Denver's ans., p. 29.)

5th. D. A. Martin. This case was included in the Lamar judgment,

Court of Claims. I only know that from the newspapers, and from inquiry at the clerk's office of the Supreme Court.

Mr. HENKLE. Do you know what was done after Judge Hughes' death?

A. I have no personal knowledge as to anything being done after Judge Hughes' death.

Q. Under the second head of the reference, what cases nearly finished have been disposed of since the death of Judge Hughes?

A. The same ten cases referred to under first head, and the following:

11th. Battersby & Metcalf, ex'r.
12th. A. L. Tyler.
13th. G. B. Lamar.
14th. D. A. Martin.
15th. John L. Hardee, ex'r.
16th John Haskins.
17th. Warren Mitchell.
18th. Home Insurance Company
19th. Southern Insurance Company.
20th J. L. Villalonga.

Q. Which of the cases nearly finished have been disposed of?

A. There are twenty-three cases under the first and twenty under the second head.

347 M'r BRADLEY. Do you know of any department business disposed of since the death of Judge Hughes?

A. There were some department cases on the books of the firm, but I don't know of anything being done.

M'r PIKE. I want to know whether the money has been collected in the Villalonga and the insurance cases?

A. There is a head under which that will come.

M'r HENKLE. What other cases of the firm of Hughes, Denver & Peck were in prosecution at the death of Judge Hughes?

A. 1st. The case of Warren Hall.
2d. Leonidas Haskell.
3d. Whiteside et al.
4th. C. A. Danolds.
5th. Bishop & Wescott.
6th. Comstock & McClellan.

These six cases were rejected in the Court of Claims and appealed to the Supreme Court of the U. S. I refer to Exhibit J. W. D. No. 1 of Denver's answer.

There are about twenty other cases that were pending at the death of Judge Hughes. The case of C. T. Cunningham, Cross & Sons, W'm Dean & Co., W. F. Dickerson, F. S. Lathrop, George Patten, Henry Lafone, John D. Merrilies, Tho's H. Gilles, Nelson McStea, W'm B. Low, Emma P. Jones, Irvine & Clay, Isabella Fluker, W'm F. Smith, S. D. Burton, John Ryon, Walker & Topp, W'm M. Derby et al., Miles Taylor, Leonidas Haskell, A. W. Wolcott, M'r's V. A. Tuttle, Herman Boker & Co., and B. F. Camp.

These cases are now pending in the Court of Claims. I refer to Ex. J. W. D. No. 1, to General Denver's answer, pp. 23, 24.

The next case is—

32. The case of Joseph B. Stewart in the supreme court of the District of Columbia. I refer to Exhibit J. W. D., p. 24.

33. The case of E. M. Dawson.

34. E. M. Guy, and

348 35. E. D. Barden, are pending in the Southern Claims Commission. I refer to Exhibit J. W. D., p. 24.

36. The case of C. A. Perry. This is in Congress. Ex. J. W. D. No. 1. Ev. before Arbitrator, p. 24.

37. The Kentucky Agricultural & Mechanical Association. Ex. A, J. W. D., p. 10, book 2.

38. The Hot Springs of Arkansas. In the Court of Claims. I believe that was decided last Monday adversely. Peck's answer, p. 44; Denver's, p. 46.

39. Claim for refunding cotton tax. That is in Congress. Peck's answer, p. 5; Denver's, p. 26.

40. W. M. McVeigh. I have not much information in regard to that. It was in the Supreme Court, but what has become of it I don't know.

Those are all the cases that come under the three heads. I know there were department cases, but I am unable to give them.

Q. Under the fourth head of reference, what other cases have been finally disposed of since the death of Judge Hughes?

A. 1. The case of Comstock & McClellan, rejected by the Supreme Court, Jan. 11, 1875.

This information I get from clerk's office.

5. Miles Taylor. Judgment was collected by M'r Janin.

There was a judgment of the Court of Claims in this case which has been collected since the death of Judge Hughes, as I understand, but I have not been to the Treasury Department to see that it was collected. M'r Janin was associated with Hughes, Denver & Peck.

3. Kentucky Agricultural and Mechanical Association. Act was approved by Congress in 1874, making appropriation of $25,000 to satisfy that case. I refer to Ex. A, J. W. D.

Those are all the cases that have been finally disposed of since the death of Judge Hughes, that I know of.

Q. Now state what fees have been collected by the defendants
349 in cases nearly finished at the death of Judge Hughes, and what fees have been received in any other case since the death of Judge Hughes.

A. Under the general head of "nearly finished" I have these:

1. Battersby & Metcalf ex'r. The judgment of the Court of Claims was for $487,242.07, on which a fee of 5 per cent. was paid, amounting to $24,362.10. Judgment, May 20, 1873; appealed August 32, 1873; appeal dismissed April 8, 1874. See Peck's ans., p. 8, and Peck's tes., pp. 42, 78, 79.

2d. The case of A. L. Tyler. The judgment of the Court of Claims was for $88,891.31, on which a fee of 5 per cent. was paid, amounting to $4,444.61. Judgment, May 19, 1873; appealed Aug. 16, 1873; appeal dismissed April 17, 1874. (See Peck's ans., p. 8; Denver's ans., p. 29; Peck's testimony, pp. 42, 78, 79. Ex. A. R., p. 8.)

3d. John L. Hardee, ex'r. Judgment of the Court of Claims was for $103,856.56, on which a fee of $22,214.21 was paid. Judgment, March 31st, 1873; certified for payment April 3, 1873. Motion for new trial overruled April 22, 1874. Peck's ans., p. 8; Denver's ans., p. 29; Peck's testimony, pp. 40, 78. Ex. A, A. R., p. 8.

4th. G. B. Lamar. Judgment of Court of Claims was for $579,343.57. Judgment, June 2, 1873; appealed Aug. 30, 1873; appeal dismissed April 6, 1874.

(Evidence in Lamar case, p. 32.)

Fee 10 per cent. on $579,343.57—$44,884 48. (Martin case included in Lamar judgment) = $534,459.09, amounting to $53,445.90. (See Peck's ans., p. 8; Denver's ans., p. 29.)

5th. D. A. Martin. This case was included in the Lamar judgment,

and the fee paid was 30 per cent.—amount of claim $44,884.48. Fees amounting to $13,465.34. (See Peck's ans., p. 8; Denver's ans., p. 29.)

6th. John Haskins. In this case an award was made by the British and American Commission in Jan., 1873, for $103,600 in gold, from which a deduction of 5 per cent. is to be made on account of expenses of
350 of commission amounting to $5,180, leaving $98,420. Fee 10 per cent., $9,842. Collected in December, 1874, and Jan., 1875.

There is a deduction to be made in this case which will appear under another head.

Q. Are those all the cases nearly finished?

A. I don't know of any others.

Under the second general head I will give the other cases:

1. Kentucky Agricultural and Mechanical Association. An appropriation was made by Congress in 1874, of $25,000 to satisfy this claim. (See Ex. A., J. W. D., p. 12.) The net fee to the firm in this case is believed to be 3 per cent., amounting to $750.

2. Miles Taylor. I said it is not known whether a fee was ever collected in this case. I know there was a judgment, and I know the firm was associated with Louis Janin.

These are all the fees that I know of which have been collected by the defendants in cases "nearly finished" at the death of Judge Hughes, and also the fees which have been received in "other cases" since the death of Judge Hughes.

Q. Have any of those fees which you have given been settled with you?

A. No, sir.

Q. Nor with Judge Hughes in his life-time?

A. No, sir.

Q. What allowance are the defendants entitled to?

A. The expenses of the firm were settled between the parties up to the 1st of Jan., 1874. The debts paid and the accounts of partners equalized. Since then, according to the best of my knowledge and belief, the following expenses have been incurred:

| | |
|---|---|
| Rent from Jan. 1st, 1874, to April 1st, 1875, 15 months, at $75 | $1,125 00 |
| Clerk's hire, at $25 | 375 00 |
| Servant's wages, at $30 | 450 00 |
| Miscellaneous, including stationery, printing, &c | 500 00 |
| | $2,450 00 |
| 351 Of this amount one-third to be charged to Hughes and deducted from aggregate amount due estate | $816 66 |

In addition to the above, which are the ordinary expenses in conducting the business of the firm of Hughes, Denver & Peck, the following are believed to have been incurred in the Haskins case:

| | |
|---|---|
| Amount paid Gen. W. G. M. Davis, in gold | $3,800 00 |
| Amount paid Arthur St. Clair Denver ¼ of total fee, after deducting the amount paid Gen. Davis, that is to say, $9,842 — 3,800 = 6,042 — 1,510.50. | |
| From this deduct ½ | $755 25 |
| | $4,555 25 |

That is the amount in gold to be deducted from whole fee.

Q. State what is the aggregate amount due now from the defendants to you as executor of James Hughes, deceased.

A. The aggregate amount is $41,805.55.

Q. Do you know of anything more that ought to be charged, and included in your statement?

A. I have no personal knowledge.

Q. What relation did you sustain to the business of the firm of Hughes, Denver & Peck while they were in existence as a firm, and when your relation, if you had any, commenced and terminated?

A. I was a clerk to the firm.

Cross-examination:

M'r PIKE. I find here in book 1, p. 28 of the second part, cases of fees amounting to $18,920.97; are those part of the cases that you testified to here?

A. Yes, sir; they have all been settled.

Q. In regard to what has been done in any case that was appealed do you know what was done?

A. I have no personal knowledge.

352 Q. You don't know anything about the influence that was brought to bear?

A. No personal knowledge in the particular cases.

Q. I asked you about the insurance companies, whether the money had been collected?

A. You can see by the last page. (Witness referring to statement, A. R. 1.)

Q. You include in that the $1,045.09 as due him?

A. Yes, sir.

Q. You were asked to state what the aggregate amount is now due upon the foregoing statement, and you answered $41,805.55, in which you included two cases that there has been no money received in. In the agricultural matter, do you know that the firm has received any money?

A. No, sir; I don't.

Q. Miles Taylor?

A. I don't know that the firm has received any money in that case.

Q. What is the nature of the case before the British and American Commission?

A. I am not sufficiently acquainted with it.

Q. What is the Fluker case?

A. That is a case that M'r Janin brought to the firm.

Q. You claim it as one of the cases of the firm?

A. Yes, sir.

Q. Do you know the firm has attended to it?

A. I got that information in Gen. Denver's exhibit.

ARCHIBALD ROANE.

353 EXHIBIT A. R. No. 1.

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EX'R OF JAMES HUGHES, deceased, vs. J. W. DENVER & C. F. PECK. } Equity 3706. Docket 13.

Unanimous decision (verbal) in favor of claimant by court in general term, March 6, 1875. Decree March 13, 1875.

Order of Judge Wylie referring case to auditor to report certain facts, March 16, 1875.

Order of Judge Wylie referring case to special auditor, Ed. C. Ingersoll, April 22, 1875.

*Revised statement of A. Roane, ex'r, &c., under order of Judge Wylie.*

The following contract has been adjudged and decreed to be valid and binding upon the parties concerned:

WASHINGTON, *Aug.* 13, 1869.

Gen. J. W. DENVER,
*Wilmington, Ohio:*

DEAR GENERAL: Arthur goes this evening; Mr. Peck leaves on Monday; I am waiting on the Perry case. Before taking this journey I am making my will and otherwise providing for accidents. Mr. Peck and I agree that in case of the death of any one of us, his heirs or personal representatives, or their duly authorized agent, shall receive
354 one-third of the fees in cases nearly finished and twenty-five per cent. in other partnership cases. Do you agree to this? Answer here.

Yours, truly,

JAMES HUGHES.

If you approve this, sign it on the other side and return it.

This proposition has been submitted to me, and I agree to it.

CHARLES F. PECK.

I agree to this, but with the express understanding that all the partnership obligations shall first be satisfied before any such division can be made at any time.

J. W. DENVER.

WILMINGTON, OHIO, *August* 18, 1869.

The above is a copy of Exhibit A. R. No. 2 to bill of complainant, and is admitted by both Denver and Peck in their answers to be a true copy. (See book No. 1. Pleadings, abstract, p. 7. Peck's ans., p. 4. Denver's answer, p. 24.)

*Answer under each head of Judge Wylie's order.*

I. What cases were nearly finished at the time of the death of Judge Hughes, Oct. 21, 1873:

| | | |
|---|---|---|
| 1. | The case of Wm. Battersby, | Judgments in Court of Claims in May and June, '73. Appealed to Sup. Court of U. States before death of Judge Hughes. Appeals dismissed Nov. 14, '74, a few weeks after his death. (See certif. cl'k of Ct. of Claims, filed with auditor.) |
| 2. | " Battersby & Cohen, | |
| 3. | " Battersby & Low, | |
| 4. | " Charles Green, | |
| 5. | " Marshall, Beach & Co. | |
| 6. | " A. P. Wetter, trustee, | |
| 7. | " Charles Hill, | |
| 8. | " C. W. W. Heinsius, | |
| 9. | " J. W. Lathrop, | |
| 10. | " Charles Wilson et al. | |

11. The case of S. G. Cabell. Judg't Mar. 31, '73. Appealed June 24, '73; appeal dismissed April 19, 1873.
12. " Mary B. Habersham, ex'r. Judg't April 13, '74; appl'd July 11, '74; still pending.
355 13. The case of Alx'r Collie. Judg't May 15, '74; appealed June 30, '74; still pend'g. (See cer. cl. C't of Cla's as above.)
14. The case of Battersby & Metcalf ex'r. Judg't May 26, '73; appealed Aug. 23, '73; dismissed April 8, '74.
15. " A. L. Tyler. Judg't May 19, '73; app'd Aug. 13, '73; dism'd Apr. 17, '74. (See cer. cl'k of C't of Claims.)
16. " John L. Hardee. Judg't March 31, '73; motion for new trial overruled April 22, '74. (See cer. of cl'k of Court of Claims.)
17. " G. B. Lamar. Judg't June 2, '73; app'd Aug. 30, '73; appeal dismissed April 6, '74.
18. " D. A. Martin; do. (See ev. in Lamar case, pp. 30 and 39.)
19. " John Haskins. Award of Br. & Amer. Com., Jan., '73. Ev. p. 47, book 2.

II. What cases "nearly finished" have been disposed of since the death of Judge Hughes:

1. The case of W'm Battersby,
2. " Battersby & Cohen,
3. " Battersby & Low,
4. " Charles Green,
5. " Marshall, Beach & Co.,
6. " A. P. Wetter, trustee.,
7. " Charles Hill,
8. " J. W. Lathrop,
9. " C. W. W. Heinsius,
10. " Charles Wilson et al.,

The appeals in these cases were dismissed Nov. 14, '73, the fees collected & settled for between the parties. (See cer. cl'k of C't of Claims, and evid. before auditor.)

11. Case of S. G. Cabell. Judg't March 31, '73. Appeal'd June 24, '73; app. dism. Ap. 22, '75.
12. " Battersby & Metcalf's ex'r,
13. " A. L. Tyler,
14. " G. B. Lamar,
15. Case of D. A. Martin,

The appeals in these cases were dismis'd in April, '74; the fees collec'd but not settled for between the parties.

356 16. " John L. Hardee, ex'r. Motion for new trial overruled April 18, '74; fee collected but not settled for between parties.
17. Case of John Haskins. Fee collected but not settled for between parties.

III. What "other cases" the firm of Hughes, Denver & Peck had at time of the death of Hughes:

1. Case of C. T. Cunningham,
2. " Cross & Sons,
3. " W'm Dean & Co.,
4. " W. F. Dickerson,
5. " F. S. Lathrop,
6. " George Patton,
7. " Henry Lafone,
8. " Jno. D. Merrilies,
9. " Thos. H. Gillis,
10. " Nelson McStea,

11. Case of Wm B. Lowe,
12. " Emma J. Jones,
13. " Irvine & Clay,
14. " Isabella F. Fluker,
15. " Wm F. Smith,
16. " S. D. Barton,
17. " John Ryan,
18. " Walker & Ryan,
19. " W. M. Derby et al.,
20. " Miles Taylor,
21. " Leonidas Haskell,
22. " A. W. Wolcott,
23. " Mrs. V. A. Tuttle,
24. " Herman, Boker & Co.,
25. " B. F. Camp.

} Pending in Court of Claims. (See Ex. J. W. D. No. 1, to Denver's ans., pp. 23 and 24.)

26. " J. B. Stewart. In sup. c't of Dist. of Col. Exh. J. W. D. No. 1, p. 24.
27. " E. M. Dawson,
28. " E. M. Guy,
29. " E. D. Barden,

} Southern Claims Commission. Exh. J. W. D. No. 1, p. 24.

30. Case of C. A. Perry. In Congress. Exh. J. W. D. No. 1, p. 24.
357 31. " Ky. Ag. & Mech. Ass'n. Exh. A., J. W. D., p. 10.
32. " The Hot Springs of Arkansas. Court of Claims. Peck's and Denver's an's, pp. 5 and 25.
33. Case of claim for refunding cotton-tax. In Congress. Do.
34. " W. M. McVeigh.
35. " Warren Hall,
36. " Leonidas Haskell,
37. " Whitesides & Co.,
38. " C. A. Danolds,
39. " Bishop & Westcott,
40. " Comstock & McClelland,
41. " Warren Mitchell,

} Rejected in C't of Claims and appealed to Sup. C't of United States. See Exh. J. W. D. No. 1, to Denver's Ans.

42. " The Home Ins. Co., of Savannah, Ga.
43. " The South. Ins. Co., of Savannah, Georgia.

} Appealed to Sup. Court of United States, and judgments affirmed.

44. " John L. Villalonga. Appealed to Sup. Court and remanded to C't of Claims for correction of judgment.

IV. What "other cases" have been disposed of since the death of said Hughes:

1. The case of Miles Taylor. (No. 20.) Judgment collected but no fee.
2. " Ky. Ag. & Mech. Ass'n. (31.) Appealed by Congress, $25,000 appropriated, but fee not yet collected.
3. " Comstock & McClelland. (40.) Rejected by Sup. C't of U. States.
4. " Warren Mitchell. (41.) Rejected by Sup. C't of United States.
358 5. Case of The Home Ins. Co., of Savannah, Ga. (42.)
6. " The South. Ins. Co., of Savannah, Ga. (43.)

} Judg't of C't of Claims affirmed by Sup. C't of U. S. and fees collected.

7. " J. L. Villalonga. (44.) Remanded to C't of Claims by Sup. C't for correction of judgment.

V. What fees have been received since the death of said Hughes in cases "nearly finished," and what fees in "other cases" not heretofore settled for:

I. Cases "nearly finished:"

1. Battersby & Metcalf's ex'r.

The judgment of the Court of Claims was for $487,242.07, on which a fee of 5 per cent. was paid, amounting to $24,362.10. Judgment May 26, 1873. Appealed Aug. 23, 1873. Appeal dismissed April 8, 1874. (See Peck's ans., p. 8; Denver's ans., p. 29. Peck's test., pp. 42, 79, and 83. Exh. A., A. R., p. 8, book 2.)

2. A. L. Tyler.

The judgment of the Court of Claims was for $88,891.31, on which a fee of 5 per cent. was paid, amounting to $4,444.61. Judgment May 19, 1873. Appealed Aug. 16, 1873. Appeal dismissed April 17, 1874. (See Peck's ans., p. 8; Denver's ans., p. 29. Peck's test., pp. 42, 79, and 83. Exh. A., A. R., p. 8.)

3. John L. Hardee, ex'r.

The judgment of the Court of Claims was for $103,856.86, on which a fee of $22,214.21 was paid. Judgment March 31, 1873. Certified for payment April 3, 1873. Motion for new trial by Attorney-General overruled April 22, 1874. (See Peck's ans., p. 8; Denver's ans., p. 29. Peck's test., pp. 40 and 78. Exh. A., A. R., p. 8.

4. Gazaway B. Lamar.

359 The judgment of the Court of Claims was for $579,343.57. Judgment June 2, 1873. Appealed Aug. 30, 1873. Appeal dismissed April 6, 1874. (See evidence in Lamar case, p. 32, and Peck's evidence before Auditor.) Fee ten per cent on $579,343.57—$44,884.48. (Martin case included in Lamar judgment)=$534,459.09, amounting to $53,445.90. (See Peck's ans., p. 8; Denver's ans., p. 29.)

5. D. A. Martin.

This case was included in Lamar judgment and the fee was 30 per cent. Amount of claim, $44,884.48. Fee 30 per cent.; amount, $13,465.34. (See Peck's ans., p. 8; Denver's ans., p. 29. Evidence Lamar case, pp. 39 and 40.)

6. John Haskins.

In this case an award was made by the British and American Commission in Jan., 1873, for $103,600 in gold, from which a deduction of 5 per cent. is to be made on account of expenses of commission, amounting to $5,180, leaving $98,420.00. Fee 10 per cent. = $9,842. Collected in Dec., 1874, and Jan., 1875. (See Denver's & Peck's statement filed with auditor, and test., book 2, p. 47.)

II. Other cases.

1. The Home Insurance Co. of Savannah, Ga.

The judgment of the Court of Claims in this case was for $35,529.58 Judgment June 3, 1873. Appealed Aug. 30, 1873. Judgment affirmed in Supreme Court of the United States March 22, 1875. Fee 5 per cent., amounting to $1,776.49. This fee has recently been collected. (See Exh. A, J. W. D., p. 11. Evidence, book 2, p. 47. Test. before auditor; cert. of cl'k of Ct. of Claims.)

2. The Southern Ins. Co. of Savannah, Ga.

The judgment of the Court of Claims in this case was for $27,176.15. Judgment June 2, 1873. Appealed Aug. 30, 1873. Judgment affirmed in Sup. Court of United States March 22, 1875. Fee 5 per
360 cent. = $1,358.80. This fee has been collected. (See Exh. A, J. W. D., p. 11, ev., p. 47. Cert. of clerk of Ct. of Claims.)

3. John L. Villalonga.

The judgment of the Court of Claims was for $90,389.89. Judgment June 2, 1873. Appealed Aug. 30, 1872. Case remanded by Sup. Ct. to Ct. of Claims to reform judgment Dec. 14, 1874. Judgment reformed for $ April, 1875. Fee 5 per cent. = $ . (See Exh. J. W. D., p. 11. Ev., pp. 44, 48.)

VI. What allowance defendants are entitled to on account of expenses actually incurred and not heretofore made (allowance) in the prosecution and on account of the business of the firm of Hughes, Denver & Peck since the death of Judge Hughes:

1. Ordinary expenses.

The expenses of the firm were settled between the parties up to Jan. 1st, 1874. All the debts were paid and the accounts of the partners equalized.

According to the statement filed by Denver & Peck with the Auditor, those expenses amount to $150 per month. This statement is accepted.

| | |
|---|---|
| Expenses from Jan. 1st, 1874, to May 1, 1875, 16 months, at $150 | $2,400 |

2. Expenses in Haskins case.

| | |
|---|---|
| 1. Amount paid to Gen. W. G. M. Davis, out of fee, in gold | $3,800 |
| 2. Amount paid to A. St. C. Denver, out of same fees, as follows: ¼ of total fee after deduction of amount paid to Gen. Davis—($9,842—$3,800=$6,042) | 1,510 50 |
| Total expenses, in gold | $5,310 50 |

(See statement of Denver & Peck, in which expenses are estimated in currency.)

331 VII. Aggregate amount now due executor, under foregoing instructions;

I. *Fees collected and not divided in cases "nearly finished."*

| | | | |
|---|---|---|---|
| 1. | Fee in case of | Battersby & Metcalf's ex'r | $24,362 16 |
| 2. | " | A. L. Tyler | 4,444 61 |
| 3. | " | John L. Hardee, ex'r | 22,214 21 |
| 4. | " | G. B. Lamar (proper) | 53,445 90 |
| 5. | " | D. A. Martin (included in Lamar judgment) | 13,465 34 |
| 6. | " | John Haskins (omitted for the present) | ..... |
| | | | $117,932 16 |
| | Deduct ordinary expenses as above | | 2,400 00 |
| | | | $115,532 16 |
| | Hughes' share, ⅓, cases "nearly finished" | | $38,510 72 |
| | Fee in Haskins case, omitted above | $9,842 00 | |
| | Deduct expenses | 5,310 50 | |
| | (gold) | $4,531 50 | |
| | Hughes' share, one-third (gold) | | 1,510 50 |
| | | | $40,021 22 |

II. *Fees collected and not divided in "other cases."*

| | | | | |
|---|---|---|---|---|
| 1. | Fee in case of | The Home Ins. Co | $1,776 49 | |
| 2. | " | The Southern Ins. Co | 1,358 80 | |
| | | | $3,135 29 | |
| | Hughes' share, one-fourth | | | 783 82 |
| | Am't carried forward | | | $40,805 04 |
| 362 | Am't brought forward | | | $40,805 04 |
| | Add ⅓ of $3,411.90 int. rev. deductions from judgments collected in life-time of Judge Hughes and recently paid to Denver & Peck by Treasury Departm't (see D. & P.'s statement filed with Auditor) | | | 1,137 30 |
| | These deductions were made from judgments paid before the death of Judge Hughes, Oct. 21, 1873, and therefore the estate is entitled to one-third. (See session acts 1871–'2, p. 369.) | | | |
| | Add, also, balance to credit of Judge H. on books of Hughes, Denver & Peck | | | 1,528 39 |
| | Total due Hughes' estate, May 1, 1875, of which $1,510.50 is in gold, share of fee in Haskins case | | | $43,470 73 |

In addition to the above, judgment has recently been rendered in the Villalonga case by the Court of Claims, on mandate of the Supreme Court of the United States, in which Villalonga is awarded $34,364.69, for cotton owned by him, and also an amount to be settled by the Attorney-General and counsel for claimant for advances on cotton made by Villalonga as factor, with interest and expenses. This will increase the judgment to $50 or $60,000, but the amount is estimated now as only

$40,000, on which there is a fee of 5 per cent., or $2,000. Claim is made for 25 per cent. of this fee, amounting to $500.00. This fee will be collected in a few weeks.

The appeal in the Cabell case has been dismissed; the judgment is for $20,513.61, on which a fee of 10 per cent. is to be paid, amounting to $2,051.30; to this amount is to be added $655.75, charged on the firm books to Cabell for previous services, and which will be collected with the fee in the case recently dismissed. The firm will therefore collect $2,707.11. (See ev., p. 47, and letter of Mr. Holbrook herewith
363 filed.) Claim is made for one-third in this case, as nothing has been done since the death of Judge Hughes except to procure the dismissal of the appeal. One-third will amount to $902.37. It is claimed by Denver & Peck that the government will refuse to pay the judgment and commence suit against Cabell to recover moneys which it is alleged he owes the United States. If nothing is collected by Denver & Peck, of course there will be nothing to divide, but if suit should not be brought, or the United States should fail in the prosecution, the judgment will be collected, and one-third of the fee will be due to the estate of Judge Hughes.

If the appeals in the Habersham & Collie case should be dismissed, it is claimed that one-third of the fees should be paid to the estate of Judge Hughes, but if the appeals have to be prosecuted and argued in the appellate court, then it might not be fair to insist that they are cases "nearly finished," in which one-third of the fees should be paid. In that event they will fall within the class of "other cases." The Auditor might report these cases as doubtful—their status to be determined hereafter by the fact whether the appeals are dismissed or whether they will have to be argued in the Supreme Court.

ARCHIBALD ROANE,
*Executor, &c.*

Ex. A. R. No. 2.

In the United States Court of Claims.

WASHINGTON, D. C.

I certify that in the following causes, to wit:

| | |
|---|---|
| William Battersby vs. The United States | 2700 |
| William Battersby and Octavus Cohen vs. same | 2698 |
| William Battersby and Andrew Low vs. same | 2714 |
| Charles Green vs. same | 2706 |
| Edward W. Marshall, John N. Beach, and Sidney Root vs. same | 2747 |
| 364 Augustus P. Wetter, trustee, &c., vs. same | 2684 |
| Charles Hill vs. same | 2719 |
| Carl W. Heinsius vs. same | 2668 |
| E. S. Lathrop, surviving partner of D. & E. S. Lathrop, vs. same | 2666 |
| and Charles Wilson and others vs. same | 2748 |

the appeals taken by the United States from the judgments of the Court of Claims to the Supreme Court of the United States, were withdrawn by the Attorney-General on the 14th day of November, A. D. 1873.

I certify further that in the case of Samuel G. Cabell vs. The United States, No. 2555, judgment was rendered for the claimant by the Court of Claims March 31, 1873, and that the said cause was appealed by the Attorney-General June 24, 1873.

That in the following causes, to wit:

The Home Insurance Company (Georgia) vs. The United States.. 2746
The Southern Insurance Company (Ga.) vs. same ..... 2718
and John L. Villalonga vs. same ..... 2739

judgments were rendered by the Court of Claims in favor of said claimants June 2, 1873, and that an appeal in each of said causes was taken by the Attorney-General August 30, 1873.

I certify further that in the following causes the petitions of the claimants were dismissed by the Court of Claims and appeals taken from said decisions to the Supreme Court of the United States, of the dates thereunder written, to wit:

Warren Hall vs. The United States ..... 3279
petition dismissed January 5, 1874; appealed February 18, 1874.
Leonidas Haskell vs. The United States ..... 2613
petition dismissed May 11, 1874; appealed July 21, 1874.
William H. Whiteside, Rude Harris, and Daniel W. Chandler vs. The United States ..... 6398
365 petition dismissed November 24, 1873; appealed February 18, 1874.
Charles A. Danolds vs. The United States ..... 3782
petition dismissed February 27, 1871; appealed April 10, 1871.

Edward F. Bishop and Josiah W. Westcott vs. The United States, No. 3110; petition dismissed May 17, 1871. No appeal filed in this cause.

Warren Mitchell vs. The United States, No. 3342; petition dismissed March 9, 1874, and appealed March 30, 1874.

Also, the case of Samuel McClelland and Charles C. Comstock vs. The United States, No. 5950. In this case the petition was dismissed December 19, 1870, and the case appealed March 14, 1871.

Test: JOHN RANDOLPH,
*Assist. Clk C't of Claims.*

In testimony whereof I hereto set my hand and affix the seal of said court this 25th day of March, A. D. 1875.

[L. S.] JOHN RANDOLPH,
*Ass't Clk Court of Claims.*

366 JAMES W. DENVER, being duly sworn, deposes and says:

Examined by M'r Pike:

M'r Pike, counsel for defendants, offers in evidence paper filed and marked Ex. X 1 and Ex. X 2.

Q. Please state the matters and facts in regard to the labor in the cases that induced you to state what you considered no case nearly finished except such as had gone into judgment and no appeal taken.

A. The reasons were that our work in a case was really only commenced when we began to get it ready for court; the testimony was all taken at the other end of the line where the claim originated, and a great mass of the work, all, in fact, except filing the petition and giving notice to take depositions, had to be done there, so that no case could be nearly finished here unless it had actually gone into judgment, and then sometimes it was a long way from being finished, as in the case of Hardee, where we had actually got the certificate from the court, and the ninety days within which time an appeal had to be taken had expired, and then, upon an order from the Attorney-General, the Secretary of the Treasury refused to pay it. A new trial was asked for and carried the case over and required the taking of a good deal of testimony

in the way of affidavits, and additional expense. That case was in fact not nearly disposed of after we had got it into a judgment.

Q. Was it not the habit of the Attorney-General to appeal in every case of large amount?

A. In almost every case. An appeal was taken in every one of our cases except that.

Q. When those cases were appealed to the Supreme Court, how long would they remain in that court before they were heard?

A. At that time they would remain from two to three years. Now it would be fully three years.

Q. According to their ordinary course?

A. Yes, sir.

Q. What was to be done in the Supreme Court?

A. Well, the record had to be taken up and filed, and after proper time briefs and arguments had to be made and printed.

Q. Therefore you come to this conclusion, that those cases are not
367 to be considered nearly finished except when they had gone into judgment and there had been no appeal?

A. Yes, sir.

Q. In procuring the withdrawal of appeals, state how it was done.

A. Well, we went time and again, I did I know of, and saw the Attorney-General and presented the facts to him, and I know it gave me a great deal of trouble and labor, and our clients, as I understood, employed other parties to try to prevail upon him to withdraw the appeal, or dismiss it, and after a long time and a great deal of labor it was finally done.

Q. Did you ever argue the merits to him?

A. O, yes. Those two insurance cases I recollect very distinctly, in the course of two or three interviews with him, that the questions in those cases came up, and in the Villalonga case, I agreed with him that there were questions of law involved in them that made it very proper that they should be appealed.

Q. How long was the Warren Mitchell case in the Supreme Court, and when was the appeal taken?

A. His (referring to Mr. Roane) paper shows. It was taken up out of its turn.

Q. The Villalonga case, how long did that take?

A. Over two years.

Q. Are your answers to these questions true; do you make them a part of your testimony upon oath? (Counsel referring to Ex. X 1.)

A. I do make them part of my answer so far as they are properly answers. Where they are merely suggestions, of course they are to be taken as suggestions.

Q. Do you consider that (referring to Ex. X 2) as a fair statement of the value of service and loss on account of these claims?

(Objected to by Gen. Henkle, counsel for claimant.)

A. The amounts contained in paragraphs 1, 2, 3, 4, and 5 of Ex. X 2
368 are correctly stated.

Q. Are the statements of paragraph six of Ex. X 2 correct?

A. They are substantially correct. I may possibly have differed as to the Adams case.

Q. Is the seventh correct?

A. In regard to the seventh paragraph of Ex. X 2, I am not very positive about that, for I only put it there. As you see I did not estimate.

Q. Tell what the object of the eighth paragraph of Ex. X 2 is. Do you claim it from the present onward?

A. I intended that to apply to the business in the future if we are required to go on with the work.

Q. You think for the future that would be a necessary allowance, $150 per month?

A. Yes, sir.

Q. What do you say as to paragraph 9, Ex. X 2?

A. I think that a fair statement for the support of ourselves and families.

Q. Do you consider that to be a reasonable sum?

A. I doubt very much if we could live on less.

Mr. HENKLE. Does your statement of receipts correspond with Mr. Roane's?

A. I don't know.

Mr. PIKE. This is a paper filed, marked "Ex. X 3," and referred to in this answer as bill of expenses from May, 1874, to March 31st, 1875; state whether that is correct.

A. I believe that to be a correct statement. Mr. Holbrook can state very fully. He has been our book-keeper, and made it out from his own books.

(Mr. Henkle, counsel for complainant, here admits the account marked "Ex. X 3.")

Q. The Miles Taylor and Fluker. Has the firm any interest in them?

A. None whatever, except to help Mr. Janin gratis. I wish to correct as to the Fluker case. In that I believe we have a contract.

Q. Is there any other case?

369 A. In the Kentucky agricultural case the fee is not collected and there is not much probability of its being collected soon. The claim was for the use of the fair grounds near Lexington, Kentucky, and owned by the Kentucky Agricultural and Mechanical Association. B. G. Bruce, of Lexington, and not E. M. Bruce, a very different man, and George W. Stewart were employed by them to prosecute the case. They sent it to Mike Delany, who was to have one-half of the fee. Mike then came and proposed to give one-half of his fee to us for assisting him in the contract. After a time one or two others were brought into the case in some way or other by Delaney, and by Stewart, and by us, I suppose. I presume we all consented to it. And we finally got the claim allowed by an act of Congress. Then the draft was sent by the Secretary of the Treasury directly to Gen. Preston, and I went out there myself to see Gen. Preston about it, after failing to get any satisfaction through correspondence, and he informed me that he had no authority to do anything, but he would have the association call the stockholders together. That was last summer. Now we are informed possibly they may be able to do something after their election of officers in May next. That is as near as we came to getting anything out of that, and what the fee will amount to when it does come is very uncertain.

Q. What about the Hot Springs case. Are you still a partner?

A. We are employed in the Hot Springs case; were from the start. We received no fee at all. The case was decided the other day against us in the Court of Claims. Of course we appealed. There are several other counsel in the case. There is Munford of Tennessee, and Rose of Arkansas. They were both here and argued the case.

Q. Have you any idea when it will be determined in the Supreme Court?

A. It can hardly get through within three years in the usual course.

370 Q. Is there any case that has been mentioned that you wish to explain?

A. I wish to state in reference to some of the cases on this list (refering to Ex. A. R. No. 1).

There are two cases of Leonidas Haskell. I am the executor of the estate. One of the cases has been decided by the Court of Claims and been rejected. In the other there is not much probability of getting a decision at all. They are both governed by the rules laid down by the Supreme Court in the Smoot case, and without some Congressional action there is no possibility of ever getting a cent out of it.

The Danolds case is about the same sort of a case.

The Comstock and McClellan case has been rejected by the Supreme Court.

I might go through the whole list and probably not find five cases on that list that is worth looking after at all.

C. T. Cunningham is entirely worthless. Cross & Sons and William Dean & Co. we got judgments for in the Court of Claims. Those were considered doubtful cases, but the Court of Claims gave us a judgment. The United States have ninety days in which to take an appeal. As they have been appealing in all of our cases, they will very probably in these.

Wm. F. Dickerson is worthless. F. S. Lathrop we have never been able to get any testimony in it and recorded it worthless.

George Patten is a pretty good case if we could get the testimony, but we can't get it.

The Lafone case is entirely worthless.

The Merrilies case never was of any account.

The Gilliss case is about in the same condition, can't get testimony.

The McStea case is about like the Lafone.

The Lowe case is worthless.

The Emma P. Jones case we have regarded as worthless.

371 Irvine & Clay, something might be realized if the parties got the testimony, but as it stands now it is worthless.

W'm F. Smith. We have done a great deal of work and as yet without any result in that case.

L. D. Barton is in about the same condition.

In John Ryan case I remember very distinctly we have never been able to collect anything.

Walker & Topp, by the rules of the Supreme Court, is ruled out.

W'm M. Derby is in the same condition exactly.

Miles Taylor is one I referred to before.

Leonidas Haskell, the second Haskell, I regard as worthless, and nothing can be done in it unless Congress will grant relief.

The Wolcott case is worhless; the ruling of the court has been against it.

The Tuttle case, for cotton destroyed, is entirely worthless.

Herman Boker & Co. That is a claim on contract for furnishing arms, and is governed by the rules laid down by the Supreme Court in the Justis case, and also the case of Samuel B. Smith, and is entirely worthless, unless the Supreme Court takes a back track.

Joseph B. Stewart case in the supreme court of the District of Columbia is a case that depended entirely upon Judge Hughes' testimony. There is no other testimony. And I suppose the only interest we have in the case now is to find out how much cost we will have to pay. There was a judgment by default and a new trial allowed, and no testimony.

The case of M'r's Dawson is pending in the Southern Claims Commission, with the probability of a decision against it from the tone and temper of the judges when M'r's Dawson was there I felt confident they would decide against her.

E. M. Guy, before the same commission, I don't regard as worth anything.

372 E. D. Barden is a case that something may possibly come out of, but it is extremely doubtful.

C. A. Perry case, M'r Roane says, is before Congress. We tried to get it before Congress, but failed to get them to act upon it. Whatever is done in that case hereafter will have to be commenced anew.

The Kentucky Agricultural & Mechanical Association I have explained.

The Hot Springs case has also been explained.

The claim for refunding cotton tax. The contract was made by Judge Hughes at Memphis, endorsed by him, and was for the firm, he representing the firm.

Q. Do you know whether there was any money received for what has been done?

A. No. I would like to get out of it the money I expended.

Q. How long ago was that contract; was it as early as 1867?

A. I think that contract was made in May, 1867. And they have effected nothing so far, and it depends entirely upon Congress.

The W. M. McVeigh case; if we ever get anything out of it, I shall be very much rejoiced.

Cross-examined:

M'r HENKLE. What do you understand by cases nearly finished under that contract?

The cases nearly finished at the time of the death of Judge Hughes, on the 21st of Oct., 1873, were such as had gone into judgment and were not appealed, nor, would I add, a new trial asked for, so that no further labor was required to be done but to collect the money. That is where I propose to draw the line of demarcation.

Q. I want to ask you, in cases where judgment had been rendered before Judge Hughes' death in the Court of Claims—if there were any such cases, I understand there to have been some—and appeals were

373 taken by the government but not prosecuted and subsequently withdrawn—whether you consider such cases nearly finished?

A. I have already answered that question. I have gone on and told what the difficulties were to get those cases withdrawn—the labor, time, trouble, and expense.

Q. I want a direct answer to that question.

A. I would not.

Q. Where judgment had been rendered in the lifetime of Judge Hughes and where appeals were perfected but subsequently dismissed, would you consider those cases as nearly finished under the terms of that contract?

A. No, sir; if we had to do any work to get those appeals dismissed.

Q. Then I understand that your construction of the terms of that contract is that unfinished cases in which there was no further work to be done were nearly finished?

A. That is what I have stated, if it is to be considered a contract at all.

Q. Why should the term "nearly finished" have been used?

A. You had better ask the man who put it in there.

Q. You give no significance to that at all?

A. No. I give it this significance: it is a very ambiguous term and ought not to have used.

Q. You would not regard any case where there was anything to do save to collect the money nearly finished under that contract?

A. No, sir.

Q. In these cases where appeals were dismissed, those of Duncan & Sherman, was not the labor and influence in procuring the dismissal of the appeals chiefly performed by attorneys and other persons employed by Duncan & Sherman, and paid for by them?

A. I have already answered that. I have already stated that I saw the Attorney-General myself on several occasions in reference to these very matters, and I spent a good deal of time and trouble and labor
374 trying to prevail upon him to dismiss the cases. And as for the parties that were employed by our clients to assist in getting those matters disposed of, I know nothing about them.

M'r PIKE. How much was paid General Butler to get the Lamar case withdrawn?

A. I can't tell that.

Q. What was paid in the Hardee case?

A. There was nothing paid; we did all the work in that. There was a man who interposed objections, claiming a portion of it. He was allowed the amount he claimed or a part of it.

Q. Was it an easy matter?

A. No. It was a very difficult matter.

J. W. DENVER.

CHARLES F. PECK, esq., being duly sworn, deposes and says:

In the list of cases furnished by M'r Roane, in which he claims one-third of the fees in the cases nearly finished at the time of the death of Judges Hughes, I understand the first ten to have been duly accounted for.

The 11th case, Samuel G. Cabell, was not nearly finished at the time of the death of Judge Hughes, because it was on appeal in the Supreme Court of the United States, where the record is found to be defective. The case must be remanded to the Court of Claims, a statement of facts there made up, and after that it must be tried in the Supreme Court of the United States. I consider that the trial in the Supreme Court of the U. S. involves more labor and care and responsibility than the trial in the Court of Claims. There is a very important question in the case, one which may prove fatal to the case, and it will require a great deal of labor in presenting it.

The Home Insurance Co. and the Southern Insurance Co., num-
375 bers 12 & 13, were appealed to the Supreme Court of the U. S. long after the death of Judge Hughes. They have been argued at length in a manner that involved a great deal of labor, care, and responsibility, quite as much if not more than the trial and preparation below. They were affirmed.

The same remarks will apply to the Villalonga case, excepting that it has been sent back for a new trial, and will have to be tried over again in the Court of Claims in addition to the care and labor in the Supreme Court.

The case of Warren Mitchell was lost and needs no comment.

The case of Habersham is now on appeal in the Supreme Court; in all probability it will be reversed, because it is very much like the

Villalonga case, which was reversed. And then it will have to be remanded for a new trial in the court below. We will ultimately recover something in it.

The case of Alexander Collie, nine-tenths of the labor in that case occurred after the death of Judge Hughes. That is a case of great magnitude and involved questions of international law. I spent two months in the preparation of a brief in that case after Judge Hughes' death. It remains yet to be tried in the appellate court, and the result is very doubtful.

The John L. Hardee case was in judgment when Judge Hughes died. At the end of three months it was not paid. But the payment was stopped in the Treasury Department because the Court of Claims was not in session at the time. The court did not meet until after the death of Judge Hughes. A motion for a new trial was interposed in Court of Claims. I can't be certain whether it was filed after his death or just before, but no action could be taken before. The motion for a new trial was treated as a new trial, that is, instead of being founded upon affidavits it was based upon testimony. The motion for a new trial was
argued very elaborately, and it would be safe to say that more
376 than half the labor was performed after the death of Judge Hughes.
That is, all the preparation and the argument upon the new trial was had after the death of Judge Hughes. The court overruled the motion for a new trial by a divided court. It was ultimately paid.

G. B. Lamar and Martin were really one case. There the greater portion of the labor was performed after his death. Over five hundred pages of testimony was taken in the case. The testimony was taken away from Washington. I took some of it and Judge Hughes took some of it, but the bulk of the testimony was taken away from Washington. The trial was a very difficult and laborious one. Afterwards, upon the appeal being taken, we had the usual amount of trouble in getting the appeal dismissed, and General Butler was employed in the case.

Those are the only cases I wish to testify to.

Mr. PIKE. Are you sure Judge Hughes took some testimony in the case?

A. I would not be sure.

Cross-examined:

Mr. HENKLE. In the case of Lamar of which you have just been speaking, I want to ask you if the testimony was not all taken, and if the case had not been tried and passed into judgment before the death of Judge Hughes?

A. Yes, sir. In that case the date I intended to refer to was not the date of the death of Judge Hughes, but his withdrawal from the case. I wish to make that correction.

Q. The case was in judgment and all the labor performed before the death of Judge Hughes?

A. Except the controversy involved in procuring the withdrawal of the appeal.

Q. In the Hardee case, Mr. Peck, you testified to that before. I want to know whether you remember of saying in your testimony before "that if the points of law as claimed by Mr. Roane were decided in his favor, he would be entitled under the agreement to one-third of the fees
in the Hardee case."

377 A. No, sir; that is evidently a misprint.

Q. Did you testify as you are stated to have testified?

A. (Witness here read his former testimony.) Reading the whole together I find my testimony is, in the main, correct. In the language quoted by M'r Henkle I was merely stating M'r Roane's position; then after stating his position I gave my views and stated the reasons why he should not have one-third of the fee. This is evident from the whole context.

Q. You did not testify that affidavits and hunting up of witnesses in Savannah was performed on motion for new trial?

A. I did testify so, and do now. The only correction that I wish to make is in the first clause that you read.

APRIL 9, 1875.

Met pursuant to adjournment.

Present, S. S. Henkle, esq., counsel for complainant, and Albert Pike, esq., counsel for defendant.

Cross-examination of M'r Peck:

M'r ROANE. With regard to the Hardee case I wish you to state what labor was performed in getting up those affidavits in regard to the new trial.

A. The affidavits were mainly prepared at Savannah. The labor was such as is usually attendant upon the preparation of any case upon motion for new trial. The Attorney-General departed from the ordinary course on his part in taking depositions. I read the affidavits, and I prepared an argument in the case in writing, and I argued the motion for new trial, which was argued at some length. I counselled with my client, I can't say how many times. He was here and I saw him repeatedly, and the motion for a new trial was substantially a retrial of the case—it involved about the same amount of labor that a retrial of a case does.

378 The first decision of the case was March 31, 1873. The time when the motion for a new trial was filed is uncertain, because the clerk failed to enter any date, from some inadvertence; it was more than three months after the judgment was rendered; it must, therefore, have been after July 1st. And the effort was then made to induce the Attorney-General to abandon his motion, and for that purpose affidavits were filed in the Attorney-General's Office. I was away, if I recollect rightly, at that time, and took little part in that.

When the court met, which it did in December, 1873, the Attorney-General did not, and would not, press his motion for a new trial or abandon it, he alleging that his principal witness had left the country; in the summer preceding had gone to Europe upon a voyage and had been shipwrecked. On the 28th of January, 1874, I filed and argued a motion to require the Attorney-General to close his proofs. The court granted the motion with some modifications, precisely what modifications I forget, but they gave him warning that he must hurry up. The court did not absolutely grant my motion, but in consequence of that motion the Attorney-General did proceed to give notice and take testimony. On the 14th of March the Attorney-General filed a motion for an extension of time, and on the 20th of March he filed a batch of testimony which must have been taken early in March, about the first of March, and on the 21st of March he filed another batch of depositions that must have been taken about the same time. Our firm did not personally attend to the taking of those depositions. They were all taken in Savannah, as was almost always the case in suits before the Court of Claims. We relied upon the attorneys employed by our clients in their States, except the witness happened to reside here or near here.

I then had the motion for a new trial set down for the 13th of April, to be argued and submitted.

Q. What attorney did you employ in getting the depositions at Savannah?

379 A. I can't say we employed any; M'r Hardee employed one M'r John O. Ferrill.

Q. M'r Ferrill was a lawyer?

A. Yes, sir; he was.

Q. He attended to the getting up the testimony in most of the Savannah cases?

A. He attended to a great part of the Savannah cases.

Q. He was perfectly familiar with the subject?

A. He was reasonably familiar; he required prompting.

Q. Did you give any special instructions to M'r Ferrill as to the testimony to be taken in this particular case of M'r Hardee?

A. I can't remember any special instructions now.

Q. Would not the letter book show if you had?

A. Well the letter-book ought to show if the letters were all copied.

Q. Was not M'r Ferrill entirely competent to attend to that matter without any special instructions, particularly as M'r Hardee was there?

A. He was, but we performed the same service with regard to the motion for a new trial as we did in the preparation and trial of other causes.

Q. Was not M'r Hardee at Savannah?

A. He was.

Q. Was he familiar with what was to be done in the case?

A. Well, hardly. He knew the facts of the case, as a client generally does. He was here two or three times to see us about the case, and we talked with him a good deal about it. He was an intelligent client; he was a merchant.

Q. I want to ask you whether there was any deduction made from the fee on account of the taking of this testimony and the amount that had to be paid by M'r Hardee to other parties?

A. There was a small deduction made.

Q. You didn't pay the expense of getting up the affidavits?

380 A. We made a compromise with M'r Hardee. He thought we ought to pay our proportion of this expense, as it was a sort of an afterclap. We denied that, but he made such a poor mouth at the affair, and said he had been to considerable expense, and so we consented to allow him a reduction,

Q. The original fee was twenty-five per cent.?

A. Yes, sir.

Q. Did you render any personal service in getting the appeal in the Battersby & Metcalf case dismissed?

A. I saw the Attorney-General repeatedly. I am not so positive about the Battersby case. I remember the Tyler case very well. There were two cases with it. And if it was pending at the same time with these others I presented them all to the Attorney-General, and urged him with unusual pertinacity to dismiss the appeals.

Q. But other gentlemen were employed to use what influence they might possess?

A. That I only know by general rumor. I have no personal knowledge of it.

Q. Is it not your opinion that the services rendered by those gentlemen were mainly instrumental in getting the appeals dismissed?

A. They ought not to have been. The Attorney-General ought not

to have been influenced by anything but law. I do not like to give an opinion that would cast imputations on him.

Q. Was he not familiar with the facts and the law of the case?

A. The Attorney-General has nothing to do with these matters until they get in the Supreme Court.

Q. Does he not act upon report of his subordinates?

A. I presume he does.

Q. In your opinion——

M'r PIKE. I object to these questions, as they have nothing to do with the matter.

381 WITNESS. I am not, on suspicion, going to make any charge upon a public officer. My opinion is something which I have a right to, and I am not bound to disclose. I prefer not to say that which might be construed into an imputation.

Q. Was General Butler employed by M'r Lamar to aid in getting the appeal dismissed in the Lamar case, including the Martin case?

A. I know he was employed in the Lamar case. But I don't wish to say that of my own knowledge he was employed to procure the dismissal.

Q. Do you know that he was paid for his services?

A. I know from M'r Lamar that he was paid.

Q. You know that the firm did not pay him anything?

A. I know that the firm did not pay him anything, so far as my knowledge extends.

Q. Was not the appeal finally dismissed upon a motion of General Butler?

A. It was dismissed upon a motion of General Butler made in the Supreme Court, not upon legal grounds however. General Butler made one motion to dismiss the appeal upon technical and legal grounds upon which he was defeated. He made a second motion, when it was dismissed, dismissed by consent.

Q. Do you know of any department business in which fees have been collected?

A. I don't, unless you can call my attention to some particular case.

Q. Don't you know there were many department cases upon the books of the firm?

A. Yes, I know there were cases.

Q. Why is it then that you are not familiar in regard to these matters, as to whether fees have been collected or not?

A. I never made any inquiry about the matter. I have given no attention to that part of the business.

Q. Do you know there were no department cases in which fees have been collected?

382 A. No, sir; if there had been any I ought to know of it; it ought to have been reported to me.

Q. When fees are collected it is supposed they would be reported to you?

A. O, yes.

Q. You do not know that there has been any?

A. No, sir.

Q. Were there not considerable amounts in debts due to the firm at the death of Judge Hughes?

A, Yes, sir; considerable amount.

Q. Something like $20,000.00?

A. Well, I think there was from $10,000.00 to $20,000.00.

Q. Do you know whether any of these debts have been collected since?

A. I have never heard of any having been collected.

Q. Have no personal knowledge that they have not been?

Q. If you can call my attention to any particular case, I could state specifically.

Q. Have you ever known of a department case in which fees were collected and not reported?

A. I have no recollection of any such case. Have heard some vague criminations that might be so construed. The allegation is made in these matters that Judge Hughes did not report a fee or collection in the case of Perry Fuller.

Q. Do you know the fee was not reported?

A. I know it was not reported to me.

Q. Explain what you know of the Perry Fuller case.

A. I know nothing of my personal knowledge.

Q. State whether these deductions from judgments of the Court of Claims on account of internal-revenue tax which have recently been collected from the Treasury Department were not on account of judgments obtained before the death of Judge Hughes.

A. I can only answer that question by saying that they were obtained from judgments that were rendered prior to the act of Congress which forbade the Secretary of the Treasury to make these deductions.

383 Q. When was that act passed?

A. The act was passed a year or two ago.

M'r PIKE. I object to any such questions.

*Haskins case.*

M'r ROANE. Will you state whether the payment to Arthur Denver in the Haskins case was one-fourth of the net or gross fee.

A. It was one-fourth of the net fee. I did not pay the money, but I understand it was one-fourth of the net fee.

Q. What do you mean by net fee; do you mean one fourth after the deduction of the amount of payment to Gen'l Davis?

A. Yes, sir; in accordance with my understanding.

Q. That was one-fourth of the net fee?

A. This case did not come under the contract we made with Arthur Denver in which he had any interest in the fees of the firm, but was under a special contract.

Q. Those payments were made in cash?

A. I did not make the settlement with Arthur Denver, and do not know of my own knowledge how the settlement was made. I merely stated how it ought to have been made according to my understanding. In justice to M'r Arthur Denver, I think he clearly earned what he did get. He worked very assiduously in the case, and it will only be a fair quantum meruit.

Q. State whether a person could not take a valuable case in the firm and earn——

M'r PIKE. I object to going any further upon this matter.

(It is here agreed by counsel of both sides that all reference to M'r Arthur Denver's interest in the case and the fee he received be stricken out.)

M'r ROANE. I want to ask you whether, in compromising with General Davis, you did not represent to his agent that General Davis ought to make an abatement of a portion of his demand because the firm

384 had to pay Arthur Denver a fee out of the same case, and whether Davis did not agree to the abatement upon this ground?

A. Unless that question is strictly and legally competent I would rather not answer it, because it might lead to the disclosure of matters which have nothing to do with this suit and which might work an injury to third parties.

(After conversation between counsel, the witness gave the following answer to the foregoing question.)

A. I did state that.

Q. I want to ask you whether, when you made payment to me of three thousand dollars in January, 1874, in making the estimate of the amount that was to be paid to me, a deduction was not made of the forty-five hundred dollars paid as a compromise in the Hunton suit?

A. I did not make up the figures on that; so far as the account is concerned it was made by somebody else, but I think that was one of the items.

M'r PIKE. I don't think you stated when the final judgment in the Hardee case was made.

WITNESS. I will state the Hardee case was never reopened. It was only a motion for a new trial, and it was overruled on the 22d of April, 1874. Then the judgment stood valid. I don't remember when we got the money, but it was shortly after that, about the 1st of May.

CHARLES F. PECK.

Adjourned.

TUESDAY, *May* 5, 1875.

Met pursuant to notice to continue the examination of this cause, under the order of reference to me made in this behalf.

Present, the parties and respective counsel, whereupon

J. W. DENVER, recalled, deposes as follows:

385 The balance recovered on judgments rendered by the Court of Claims, and withheld by the Treasury, were not paid until after a test case was taken through the Court of Claims and an appeal through the Supreme Court. The title of this case, was I believe, Dominick O'Grady against the United States, and was decided by the Supreme Court during the last term and the money collected only a few days ago. The suit was brought two years ago, I think. When the Treasury Department refused to pay the money first, it was with the understanding, reduced to writing, that the matter should be held up until a test case was made and decided by the Supreme Court of the U. States. This was not one of our firm cases, but was a case agreed upon by the department and the parties to test the question in the Supreme Court. The Dominick O'Grady case was one of T. J. D. Fuller's cases.

J. W. DENVER.

Sworn to and subscribed before me this 5th day of May, A. D. 1875.

E. C. INGERSOLL,
*Special Auditor.*

Adjourned to a day to be agreed upon by counsel.

E. C. INGERSOLL,
*Special Auditor.*

## EXHIBIT X 1.

*Statement of James W. Denver and Charles F. Peck upon the points of reference to the Auditor.*

1st. What cases belonging to the late firm of Hughes, Denver & Peck were "nearly finished" at the time of the death of said Hughes, to wit, the 21st day of Oct., 1873?

2d. What cases "nearly finished" at said date have been disposed of said Hughes?

Answer. The cases "nearly finished" at the time of the death of Judge Hughes, to wit, on the 21st day of Oct., 1873, were such as had gone
386 into judgment and were not appealed, nor new trials asked for, so that no further labor was required to be done but to collect the money. There were no such cases, and no money collected except what appears in the individual accounts of James Hughes, James W. Denver, and C. F. Peck, to Feb. 1, 1874, as shown in Exhibits 2, 3, and 4 of book of pleadings (1).

3d. What "other cases" the said late firm of Hughes, Denver & Peck had at the date of the death of said Hughes for prosecution?

Answer. Shown by Exhibit 1, book 1, of pleadings.

4th. What if any of the "other cases" have been finally disposed of since the death of said Hughes?

5th. What fees have been received by the defendants in cases "nearly finished" at the death of said Hughes and not heretofore settled between the parties to this suit, and what fees have been received, if any, in "other cases," since the death of said Hughes?

Answer. All fees received to April 1st, 1875, since the death of Judge Hughes, are accounted for in Exhibits 2, 3, and 4 of book 1, pleadings, except the following, viz:

Net fee in Haskins case:

| | | |
|---|---|---|
| $4,087.50 collected Dec. 11, '74, | | |
| 941.57 " January 26, '75 ..... ..... | | $5,029 07 |
| Fees on balances of cases heretofore collected, but in which internal-revenue tax had been withheld ..... | | $3,411 90 |
| Fee in Lamar case (individual case of Denver & Peck) ..... | $53,445 90 | |
| Costs paid by Denver & Peck ..... | 164 00 | |
| | | $53,609 90 |

The fee entered in Exhibits 3 and 4 of pleadings as received from D. A. Martin, was for moneys recovered in the Lamar case, and paid by Lamar to Martin, $13,465.54.

387 6th. What allowances the defendants are entitled to on account of expenses actually incurred and not heretofore made, in the prosecution of and on account of the business of Hughes, Denver & Peck since the death of said Hughes?

Answer. The expenses shown in Exhibit 6, of Book 1, Pleadings, the expense account herewith enclosed, marked 1, and additional allowances as claimed in statement enclosed and marked 2.

EXHIBIT X 2. Referred to in statement of Denver & Peck.

*Allowances claimed by J. W. Denver and C. F. Peck in the suit of A. Roane, executor, &c., vs. Denver & Peck.*

List of cases and amount of each before the British and American Mixed Commission, under 12th article of the treaty of May 8th, 1871, represented by Hughes, Denver & Peck, attorneys for claimants, and attended to exclusively by J. W. Denver, during the years 1871-'2-'3, during which time Judge Hughes attended to his own private business and gave little or no attention to the business of the firm. C. F. Peck, when not sick during the same time, attending to other business of the firm.

| Title of cases. | Amount of claim. |
|---|---|
| William Dean & Co | $275,811 26 |
| Tipper & Taylor | 33,941 86 |
| Charles Meyers | 220,736 80 |
| D. & T. Harrison | 230,998 63 |
| Stephen Watson | 301,009 24 |
| Charles Hill | 190,501 16 |
| John K. & Edward Cross | 47,375 33 |
| William Battersby | 1,573,500 00 |
| A. Collis & Co | 4,415,000 00 |
| John C. Forbes | 2,254,800 00 |
| Charles Green | 830,588 61 |

Richard W. Inman, small case.

388 All the above cases were rejected. They required a vast amount of labor and heavy expenses, not less than ($15,000) fifteen thousand dollars in value and amount, which sum should be allowed as firm losses.

2nd.

The claim of John Haskins was the only one of the firm before the British and American Mixed Commission in which an award was obtained.

| | | |
|---|---|---|
| The award was for $103,600, less 5 per cent. for expenses | $98,420 00 | |
| Fee 10 per cent. on $98,420 | $9,842 00 coin. | |
| | 10,998 42 cy. | |
| Expenses: | | |
| ¼ of nett fee paid to A. St. C. Denver, as per contract | $1,676 35 | |
| Amount paid W. G. M. Davis on compromise forced by admissions of A. Roane, ex | 4,284 50 | |
| | 5,960 85 | |
| Amount realized by Denver & Peck | 5,037 57 | |
| (Costs $8.50) | 5,029 07 | |

We claim that the sum of ($5,960.85) five thousand nine hundred and sixty dollars and eighty-five cents should be allowed as losses to the firm.

3d.

The case of McDonald & Fuller. Our fee in this case was to have been 10 per cent. on the amount recovered. Judge Hughes took special

charge of the case and placed it in the hands of Chipman, Hosmer & Co. to prosecute. They recovered through the War Department $32,090.75 and through Court of Claims $27,780.15 (June 15, 1868), in all $59,870.90, on which our fee should have been $5,987. Judge Hughes obtained from Perry Fuller $2,000, and claimed it a payment on this fee,
389 but never reported it to the firm. We claim the whole fee of $5,987 should be charged to him, or rather against his estate, McDonald and Fuller having since become insolvent.

4th.

The Laplante case. Hunton and Chadwick claimed one-half of the fee in this case. They really had no right to any part of it, but in consequence of admissions made by Judge Hughes on a theory that he could relieve himself and compel Denver & Peck to pay the whole amount, a compromise was forced, and $4,500 was paid to Hunton & Chadwick.

5th.

The Lamar case. Before Hughes' withdrawal from this case the firm had never proposed to charge less than fifteen per cent., and had demanded twenty-five per cent. After Hughes withdrew, Denver & Peck made a contract with Lamar for ten per cent. The difference between ten and fifteen per cent. (=$28,967.67) should be charged to the estate of Hughes, if he is allowed an equal share, or any share, of the fee.

6th.

The case of Charles H. Adams. Claim for $23,400. Judgment in Court of Claims for $2,080. After motion of appeal Judge Hughes took entire control of the case, but neglected it and did not take it up at all. We were compelled to abandon the whole fee—say $400—to be relieved from the consequences of the neglect.

7th.

The case of Susan A. Shelby. This was a good claim for 100 bl*a*es of cotton, and after a good deal of work had been done on it, Judge Hughes took all the papers out of the office and returned them to the claimant. If he made any reservation for fees he never reported it. The understanding was that he had given up the case. The services ren-
390 dered in the case were worth $500, and lost by Hughes' act. The case of Madame Bertinetti was similar to that of Mrs. Shelby. It was given up by Judge Hughes, and there was afterwards collected on it $11,860. Our services in the case were worth at least $1,000.

8th.

We claim an allowance for office rent, clerk hire, printing, and all office expenses of $150 per month.

9th.

Denver and Peck claim an allowance of $6,000 per annum each for support of themselves and families until the business of the old firm is finally closed up. That office rent and office expenses and expenditures for printing, &c., be allowed them.

EXHIBIT X 3.

*Expense account May* 16, 1874, *to April* 1, 1875.

OFFICE EXPENSES.

| | | | |
|---|---|---|---|
| 1874. | | | |
| May | 16. | Fuel | $13 93 |
| June | 3. | Office rent for May | 75 00 |
| | 5. | Janitor | 30 00 |
| | | Gas bill | 60 |
| | | Repairs to safe | 1 00 |
| July | 1. | P. O. box rent | 4 80 |
| | | Office rent for June | 75 00 |
| | | Janitor for June | 30 00 |
| | | Bailiff fees | 5 00 |
| Sept. | 3. | Office rent for July | 75 00 |
| | | Office rent for August | 75 00 |
| | | Janitor for July and August | 60 00 |
| | | Mohun & Co., stationery | 45 40 |
| | | Ice bill | 4 00 |
| | | Gas bill July and August | 50 |
| | | Repairs | 25 |
| Oct. | 1. | Rent of office for September | 75 00 |
| | | Gas bill | 75 |
| | 2. | Janitor for September | 30 00 |
| | | Box rent and postages | 4 53 |
| Sept. | 30. | Printing McClelland & Co. case | 58 00 |
| Nov. | 2. | Gas bill for October | 1 75 |
| 391 Nov. | | 6. Janitor | $30 00 |
| | | 30. Office rent for October and November | 150 00 |
| Dec. | 1. | Gas bill for November | 1 00 |
| | 3. | Janitor for November | 30 00 |
| 1875. | | | |
| Jan. | 2. | Office rent for December | 75 00 |
| | | Gas bill for December | 2 25 |
| | | P. O. box rent | 4 00 |
| | 6. | Janitor for December | 30 00 |
| Feb. | 1. | Gas bill for January | 1 50 |
| | | Gas bill paid by J. W. Denver in 1872 and 1873, and not charged | 16 05 |
| | 3. | Fuel | 34 46 |
| | | Office rent for January | 75 00 |
| | | Janitor for January | 30 00 |
| March | 1. | Gas bill for February | 2 00 |
| | | Janitor for February | 30 00 |
| | 4. | Office rent for February | 75 00 |
| | | Court fees Haskins case | 8 50 |
| | | T. L. Holbrook, salary for 11 mos | 275 00 |
| | 31. | Office rent for March | 75 00 |
| | | Janitor for March | 30 00 |
| | | | $1,640 27 |
| Deduct item charged April 27, '74 (Exhibit 6, book 1, pleadings), individual matter of C. F. P | | | 90 75 |
| | | | $1,549 52 |

392 *Report of E. C. Ingersoll, special auditor.—Filed June 30, 1875.*

Supreme court of the District of Columbia.

ARCHIBALD ROANE, EX'R, *vs.* J. W. DENVER AND C. F. PECK. } No. 3706. Equity.

*Oath of office.*

I, E. C. Ingersoll, appointed special auditor, do solemnly swear, affirm, that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

[SEAL.] EDWARD C. INGERSOLL,
*Special Auditor.*

*Report of special auditor.*

(Endorsement:)

I certify that it was stipulated by counsel before me that this report was not to be acted on by the court until Sept. term (of equity) 1875.

E. C. INGERSOLL,
*Special Auditor.*

Filed June 30, 1875.

R. J. MEIGS.

In the supreme court of the District of Columbia, the day of June, 1875.

ARCHIBALD ROANE, EXECUTOR OF JAMES Hughes, deceased, *vs.* J. W. DENVER AND C. F. PECK. } Equity, No. 3706. Doc. 13.

393 On the 13th day of March, A. D. 1875, a decree was passed in this cause by the supreme court of the District of Columbia sitting in general term, substantially as follows: That complainant, as executor of James Hughes, deceased, was entitled to recover from the defendants the full one-third part of all moneys which have come, or may hereafter come, into their hands since the death of said Hughes as fees in all cases "nearly finished" at the date, October 21st, 1873, the time of the death of said Hughes; and one-fourth part of moneys received, or to be received, by them in "all other cases" belonging to the late firm of Hughes, Denver & Peck, in pursuance of a contract dated August 13, 1869 (letter of James Hughes of that date), and accepted by J. W. Denver, Aug. 18, 1869, which said contract is adjudged and decreed to be valid and binding upon all the members of the said late firm of Hughes, Denver & Peck. The court further finds and decrees that the case of "G. B. Lamar," including the Martin case, falls within the terms of said contract (letter of James Hughes to Denver), and that the complainant, as executor, &c., is entitled to receive the one-third or one-fourth of the fees collected in this case "as it may hereafter be

found to fall within the class 'nearly finished' at the time of the death of said Hughes, or the class of 'other cases.'"

On the 16th of March, 1875, this cause was referred to the late auditor of the court, Robert Leech, esq., to ascertain—

1st. What cases belonging to the late firm of Hughes, Denver & Peck were "nearly finished" at the time of the death of said Hughes, to wit, the 21st day of October, 1873.

2nd. What cases "nearly finished" at said date have been disposed of since the death of said Hughes.

3d. What "other cases" the said late firm of Hughes, Denver & Peck had at the date of the death of said Hughes for prosecution.

394 4th. What, if any, of the "other cases" have been finally disposed of since the death of said Hughes.

5th. What fees have been received by the defendants in cases "nearly finished" at the death of said Hughes, and not heretofore settled between the parties to this suit, and what fees have been received, if any, in "other cases" since the death of said Hughes.

6th. What allowance the defendants are entitled to on account of expenses actually incurred, and not heretofore made, in the prosecution of and on account of the business of Hughes, Denver & Peck since the death of said Hughes.

7th. What aggregate amount is now due upon the foregoing instructions from the defendants to the complainant as executor of James Hughes, deceased.

Under the foregoing reference testimony was taken before the late auditor, which is to be found in the printed pamphlet marked "A," and subjoined to this report.

In consequence of the death of Mr. Leech, it was ordered by the court, by order of date April 22, 1875, that the reference heretofore made be transferred to the undersigned as special auditor, and I was directed to complete the audit of the said cause in the manner prescribed by the order of reference of March 16th, 1875, and to report to the court.

In compliance with this order notice was given to the parties, who, with their respective counsel, met at my office, No. 454 L'a ave., Washington, D. C., on the 5th day of May, 1875, and further testimony was taken, which will be found in the printed pamphlet "A."

The testimony on each side being closed, I proceeded to consider the matters under the order of reference.

The meaning of the term "nearly finished" in the contract of Aug. 13, 1869, and Aug. 18, 1869, as applied to the cases belonging to the late firm of Hughes, Denver & Peck, has not been fixed by the terms of

395 the decree or order of reference, and I am directed in express terms to report what cases were "nearly finished," &c.

The evidence shows that the Court of Claims was the "forum" for nearly all the cases of the late firm of Hughes, Denver & Peck.

After careful consideration and an endeavor to reach a reasonable and practical solution of the question as applied to these cases, I am of opinion that such cases as had gone to judgment in the Court of Claims at the time of the death of said Hughes, and, if appealed to the Supreme Court of the United States, the appeals withdrawn or dismissed after his death without trial before the appellate court, are fairly within the term "nearly finished," as contemplated by the parties to the contract of August 13 and 18, 1869, and I so find. With this interpretation of term "nearly finished," the status of all the cases in controversy is fixed, except the case of John L. Hardee, exr.

In this case judgment was rendered in the lifetime of Judge Hughes,

and no appeal was taken, but a motion was made by the Attorney-General for a new trial. The motion came on for argument after the death of Hughes, and it was overruled by the court, and the fee was collected. It appears from the evidence that the preparation for and argument of this motion involved a great deal of labor and trouble and some expense, which consisted chiefly in hunting up witnesses and procuring their affidavits. It appears that this labor was mostly performed in Savannah, Ga., by the client himself and by an attorney employed and paid by him, and he also appears to have paid all other necessary expenses. A reduction was made in the fee originally agreed to be paid, but this reduction was shared equally by all the partners. The additional labor in the case performed by the defendants since the death of Judge Hughes, was substantially in the argument of the motion for a new trial after the evidence had been collected and prepared
396 upon which to defeat it. I am therefore of opinion that no labor of quality or quantity was performed by the defendants in this case sufficient to take it out of the class "nearly finished."

I now proceed, in accordance with the views expressed, to report in detail upon the matters contained in the order of reference:

1st. What cases belonging to the late firm of Hughes, Denver & Peck were "nearly finished" at the time of the death of said Hughes, to wit, Oct. 21, 1873?

I find the following to fall under this head:

1. The case of W'm Battersby.
2. " Battersby & Cohen.
3. " Battersby & Low.
4. " Charles Green.
5. " Marshall, Beach & Co.
6. " A. P. Wetter, trustee.
7. " Charles Hill.
8. " J. W. Lathrop.
9. " C. W. W. Heinsius.
10. " Charles Wilson et al.
11. " S. G. Cabell.
12. " Battersby & Metcalf's ex'r.
13. " A. L. Tyler.
14. " Jno. L. Hardee, ex'r.
15. " G. B. Lamar, }
16. " D. A. Martin. }
17. " John Haskins.

All the above cases were Court of Claims cases except the last, No. 17, which was a case before the British and American Commission, in which an award was made in favor of the claimant in the lifetime of Judge Hughes.

2d. What cases "nearly finished" at said date have been disposed of since the death of said Hughes?

397 In answer, I have to report that I find all the cases enumerated above under the first head of reference have been disposed of, and in the first ten (10) settlement made between the parties.

3d. What "other cases" the said late firm of Hughes, Denver & Peck had at the date of the death of said Hughes for prosecution?

I find the following:

1. Case of C. T. Cunningham.
2. " Cross & Sons.

3. Case of W'm Dean & Co.
4. " W. F. Dickerson.
5. " F. S. Lathrop.
6. " George Patton.
7. " Henry Lafone.
8. " Jno. D. Merrilies.
9. " Thomas H. Gillis.
10. " Nelson McStea.
11. " W'm B. Lowe.
12. " Emma J. Jones.
13. " Irvine & Clay.
14. " Isabella F. Fluker.
15. " W'm F. Smith.
16. " S. D. Burton.
17. " John Ryan.
18. " Walker & Topp.
19. " W. M. Derby et al.
20. " Miles Taylor.
21. " Leonidas Haskell.
22. " A. W. Wolcott.
23. " M'r's V. A. Tuttle.
24. " Herman Boker & Co.
25. " B. F. Camp.
26. " J. B. Stewart.
27. " E. M. Dawson.
28. " E. M. Guy.
398 29. Case of E. D. Barden.
30. " C. A. Perry.
31. " Kentucky Ag. & Mechan's Association.
32. " The Hot Springs of Arkansas.
33. " Claim for refunding cotton-tax.
34. " W. M. McVeigh.
35. " Warren Hall.
36. " Leonidas Haskell—Sup. Court U. S.
37. " Whitesides & Co.
38. " C. A. Danolds.
39. " Bishop & Westcott.
40. " Comstock & McClelland.
41. " Warren Mitchell.
42. " The Home Insurance Co. of Savannah.
43. " The Southern Ins. Co. of Savannah.
44. " J. L. Villalonga.
45. " Mary B. Habersham.
46. " Alexander Collie.

4th. What, if any, of the "other cases" have been finally disposed of since the death of said Hughes?

The following of this class have been disposed of:

1. The case of Miles Taylor (No. 20). Judgment collected, but no fee.
2. The case of K'y Ag. and Mechn's Ass'n. No fee collected as yet.
3. Comstock & McClelland. Rejected by Supreme C't of United States.
4. The case of Warren Mitchell. Rejected by Supreme Court United States.
5. The Home Ins. Co., Savannah, Ga. Fee collected.
6. The Southern Ins. Co. of Savannah. Fee collected.
7. The case of J. L. Villalonga. No fee collected as yet.

5th. What fees have been received by defendants in cases
399 "nearly finished" at the death of said Hughes, and not heretofore settled between the parties to this suit, and what fees have been received, if any, in other cases since the death of said Hughes?

I. I find the following cases "nearly finished":

| | |
|---|---|
| 1. Case of Battersby & Metcalf ex'r: judgment, $487,242.07; fee, 5 per cent | $24,362 10 |
| 2. Case of A. S. Tyler: judgment, $88,892.31; fee, 5 per cent | 4,444 61 |
| 3. Case of John L. Hardee, ex'r: judgment, $103,856.86; fee | 22,214 21 |
| 4. Case of G. B Lamar: judgment, $579,343.57; fee, 10 per cent. on 534,459 | 53,445 90 |
| 5. D. A. Martin case: judgment, $44,884.48, included in Lamar judgment; fee, 30 per cent | 13,465 34 |
| 6. Case of John Haskins: award of British and American Commission, $103,600, gold, less 5 per cent. expenses commission, amounting to $5,180, leaving $98,420.00; fee, 10 per cent, 9,842.00, gold; currency | 10,998 42 |
| 7. S. G. Cabell's case: judgment, $20,513.62; fee, 10 per cent., 2,051.36, to which is added $655.75 charges for previous services collected | 2,707 11 |
| | $131,637 69 |

II. "Other cases":

| | |
|---|---|
| 1. Case of the Home Ins. Co. of Savannah, G'a: judgment, $35,529.58; fee, 5 per cent | 1,776 49 |
| 2. Case of Southern Ins. Co. of Savannah, G'a: judgment, $27,176.15; fee, 5 per cent | 1,358 80 |
| | $3,135 29 |

400 6th. What allowance the defendants are entitled to on account of expenses actually incurred and not heretobefore made in the prosecution of and on account of the business of Hughes, Denver & Peck since the death of said Hughes.

I find under this head that there are two classes of expenses for which the defendants are entitled to allowance:

1st. Ordinary office expenses, including rent, clerk-hire, stationery, printing, &c.

These expenses are estimated at $150.00 per month by the defendants, and the complainant agrees that this sum per month is fair.

2d. Actual outlay for assistance in the conduct of particular cases.

| | |
|---|---|
| Under the first head, since the settlement between the parties, January 1, 1874, when the debts were paid and the accounts of the parties equalized, the ordinary office expenses to September 1, 1875, at $150.00 per month, 20 months, amount to | $3,000 00 |
| Under the 2d head, I find there has actually been paid by the defendants in the Haskins case as follows: | |
| ¼ of nett fee paid to A. S't C. Denver, as per contract | 1,676 35 |
| Amount paid to W. G. M. Davis | 4,284 50 |
| Total expenses actually incurred | 8,960 85 |

The defendants c'aim that certain allowances should be made them,

as set forth in their exhibit filed with the auditor marked "X 2" (printed pamphlet A, pp. 50–53), proceedings before auditor.

I have carefully considered the matters contained in this exhibit, and am of opinion that the allowances claimed do not fall within the scope of the reference made to me by the court, which directs the ascertainment of expenses "actually incurred," &c., excepting, of course,
401 the claim made in the Haskins case as above and the amount for rent, &c., as above.

7th. What aggregate amount is now due upon the foregoing instructions from the defendants to the complainant as executor of James Hughes, deceased.

I find the sum of $43,592.45 is due to the complainant as executor of James Hughes on the first day of September, 1875, which will more fully appear from the following:

| | |
|---|---|
| 1st. Fees collected by defendants in cases "nearly finished" as above | $131,637 69 |
| Fees of balances of cases heretofore collected but in which internal-revenue tax had been withheld, as appears from X 1, p. 49, proceedings before auditor, judgment having been rendered in these cases before the death of Judge Hughes | $3,411 90 |
| | $135,049 59 |
| Deduct expenses as above | 8,960 85 |
| | $126,088 74 |
| Hughes' share, $\frac{1}{3}$ | 42,029 58 |
| Fees collected in other cases as above, $3,135.29; Hughes' share, $\frac{1}{4}$ | 783 82 |
| | $42,813 40 |
| Add balance to Hughes' credit on books of Hughes, Denver & Peck | 779 05 |
| | $43,592 45 |

It is proper to state that there are no differences between the parties to this suit concerning the items of the cases, the difference being as to the classification of the cases as "nearly finished" and "other cases," and as to certain claims of allowances in favor of the defendants.

I transmit with the report the printed documents, containing the pleadings, evidence, exhibits, and proceedings before the auditor in this cause.

EDWARD C. INGERSOLL,
*Special Auditor.*

402 *Exceptions to special auditor's report.—Filed Aug.* 24, 1875.

In the supreme court of the District of Columbia.

ARCHIBALD ROANE, EXECUTOR OF THE WILL of James Hughe, deceased, plaintiff, *vs.* JAMES W. DENVER & CHARLES F. PECK, defendants. } 3706. Equity docket 13.

The defendants except to the report of the special auditor in this cause upon the several grounds following, that is to say:

1st. That the said special auditor determined, and in accordance therewith made his report, "that such cases as had gone to judgment in the Court of Claims at the time of the death of the said Hughes, and, if appealed to the Supreme Court, the appeals withdrawn or dismissed after his death, without trial before the appellate court, are fairly within the term 'nearly finished,' as contemplated by the parties to the contract of August 13 and 18, 1869."

2d. That the said special auditor determined, and in accordance therewith made his report, that the case of John L. Hardee, executor, was nearly finished at the time of the death of the said James Hughes, within the meaning of the said supposed contract.

3d. That the said special auditor determined that the case of John Haskins, before the British and American Commission, was nearly finished at the time of the death of the said James Hughes.

4th. That the said special auditor allowed to the said Roane, as executor, one-third of the fee in the case of Battersby and Metcalf, executors.

5th. That the said special auditor allowed to the plaintiff one-third of the fee in the case of A. S. Tyler.

6th. That the said special auditor allowed to the plaintiff one-third of the fee in the case of John L. Hardee.

7th. That the said special auditor allowed to the plaintiff one-third of the fee in the case of Gazaway B. Lamar.

8th. That the said special auditor allowed to the plaintiff one-third of the fee in the case of D. A. Martin.

9th. That the said special auditor allowed to the plaintiff one-third of the fee in the case of John Haskins.

10th. That the said special auditor allowed to the plaintiff one-third of the fee in the case of S. G. Cabell.

11th. That the said special auditor allowed to the plaintiff one-fourth of the fee in the case of the Home Insurance Company of Savannah, Georgia.

403 12th. That the said special auditor allowed to the plaintiff one-fourth of the fee in the case of the Southern Insurance Company of Savannah, Georgia.

13th. That the said special auditor refused to allow to the defendants, as losses of the firm, the sum of fifteen thousand dollars claimed by them, or any part thereof, for the time, labor and expense employed, performed, incurred and wholly lost in the several cases before the British and American Commission, in which no awards were obtained, set forth and stated in Exhibit X 2, referred to in the report of the said special auditor, and in statement Exhibit X 1, filed before him by the said defendants.

14th. That the said special auditor refused to allow against the estate of the said James Hughes the fee in the case of McDonald and Fuller, lost to the firm by his act alone, or any part of the same.

15th. That the said special auditor refused to allow against the estate of the said Hughes the amount lost by the firm by his acts and admissions in the case of Laplante, being the amount paid to Hunton & Chadwick, or any part of the same.

16th. That the said special auditor refused to allow against the estate of the said Hughes the amount lost by the firm by his withdrawal from and refusal to attend to the case of Gazaway B. Lamar and by the consequent reduction of the fee or any part of the same.

17th. That the said special auditor refused to allow against the estate of the said Hughes the fee in the case of Charles H. Adams, lost by the firm in consequence of the loss of the case by his neglect, or any part of the same.

18th. That the special auditor refused to allow, against the estate of the said Hughes, the fee due the firm for services in the case of Susan A. Shelby, abandoned, and the fee lost by him and his sole act.

19th. That the said special auditor refused to allow against the estate of the said Hughes the fee lost by his abandonment and neglect in the case of Madam Bertinetti.

20th. That the said special auditor refused to allow to the defendants or either of them any sum whatever for the support of themselves and families since the death of the said Hughes, the same being, at least in part, legitimately expenses incurred in carrying on the business of the firm, and of which the estate of the said Hughes bears no part, while the said special auditor allows it one full third of nearly all the receipts of the firm and of the proceeds of their labor and expenditure of time and money since his death.

Upon all which points and in all which respects the defendants pray that the court may refuse to confirm the said report, and that, their grounds of exception being allowed as valid, further reference to the proper auditor of the court may be made.

PIKE & JOHNSON,
*Solicitors for Def'ts.*

404 *Reference to gen. term, Sept.* 20, 1875.

In the supreme court of the District of Columbia.

ARCHIBALD ROANE
*vs.*
J. W. DENVER ET AL. } 3706. Equity dock. 13.

By consent of the parties, it is this 10th day of September, 1875 ordered, that this cause be certified to the general term for hearing at its next session.

By the court.

A. B. OLIN, *Justice.*

*Decree in general term, November* 29, 1875.

In the supreme court of the District of Columbia. In general term, November 29th, 1875.

MONDAY, *November 29th*, 1875.

Session resumed pursuant to adjournment.

Present, Justices Olin, Wylie, Humphreys, and MacArthur; Chief Justice Cartter absent holding the circuit court.

405 ARCHIBALD ROANE, EX'R OF JAMES Hughes, deceased, compl't,
*vs.*
J. W. DENVER AND C. F. PECK, DEFENDANTS. } 3706. Equity docket 13.

This cause came on to be heard on the exceptions to the special auditor's report, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed this 29th day of November, 1875, that the exceptions to the report of the special auditor be, and the same are hereby, overruled, and that the report of the special auditor be in all things approved and confirmed.

And it is further ordered, adjudged, and decreed, that the defendants do, within sixty days from this date, pay to the complainant as executor of James Hughes, deceased, the sum of forty-three thousand and five hundred and ninety-two dollars and forty-five cents, the amount found in the hands of the defendants, with interest thereon from
406 the date hereof, on the first day of September, 1875, to which

the complainants, as executor as aforesaid, was entitled, saving and reserving to the complainant from time to time the right to apply to this court for an order for the payment of such other and further sums of money as he may show have come to the hands of the defendant from further collecting, according to the principles of the original decree in this cause, and according to the classification of the said report of the special auditor; and that on failure of defendants to pay the said sum hereby found to be due, within the said period of sixty days, complainant have execution therefor; and, finally, that the defendants pay the costs of this suit, to be taxed by the clerk of this court.

*Appeal to S. C. U. S.*

And from this decree the defendants, by their solicitor, here now in open court, pray an appeal to the Supreme Court of the United States, and the same is allowed.

By order of the court.

407 In the supreme court of the District of Columbia, the 12th day of January, 1876.

ARCHIBALD ROANE, EXECUTOR OF THE estate of James Hughes, deceased, *vs.* CHARLES F. PECK AND JAMES W. DENVER. } No. 3706. Equity docket 13.

Know all men by these presents, that we, James W. Denver, Charles F. Peck, George W. Cochran, Addison A. Hosmer, and George Taylor, are bound unto the above named Archibald Roane, executor of the estate of James Hughes, deceased, in the sum of fifty thousand dollars, to be paid to the said Archibald Roane, executor of the estate of James Hughes, deceased, his successors, executors, or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 12th day of January, 1876.

Whereas the above-named Charles F. Peck and James W. Denver have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Charles F. Peck and James W. Denver shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES F. PECK. [SEAL.]
J. W. DENVER. [SEAL.]
ADDISON A. HOSMER. [SEAL.]
GEO. W. COCHRAN. [SEAL.]
GEO. TAYLOR. [SEAL.]

Sealed and delivered in presence of—
JOHN E. BEALL.
A. ST. C. DENVER.

Approved.

D. K. CARTTER,
*Chief Justice.*

408 *Clerk's certificate.*

CLERK'S OFFICE,
*Supreme Court of the District of Columbia:*

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 6th day of October, 1876.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 240. James W. Denver & Charles F. Peck, appellants, vs. Archibald Roane, ex'or of James Hughes, dec'd. Dist. of Columbia sup. court. Filed 14th October, 1876.

